

No. 15646

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United States  
Court of Appeals  
For the Ninth Circuit

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OTTO W. HEIDER,

Appellant.

vs.

SAMUEL A. McALLISTER, Trustee in Bank-  
ruptcy of the Estate of Rand Truck Line, Inc.,

Appellee.

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Transcript of Record  
FILED

DEC 26 1957

PAUL P. DYER, CLERK

Appeal from the United States District Court for the  
District of Oregon



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Appeal from the United States District Court for the  
District of Oregon

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District Court of the United States  
For the District of Oregon  
No. B-29990

In the Matter of:

RAND TRUCK LINE, INC., an Oregon Corporation

ORDER OF GENERAL REFERENCE  
IN JUDGE'S ABSENCE

At Portland, in said district, on the 20th day of May, 1949,

Whereas a petition was filed in this court, on the 20th day of May, 1949, by Rand Truck Line, Inc., an Oregon Corporation, the bankrupt above named, praying that it be adjudged a bankrupt under the Act of Congress relating to bankruptcy; and whereas the judges of said court are absent from the City of Portland, and pursuant to a standing order of this court dated June 25, 1942,

It is Ordered that the above-entitled proceeding be, and it hereby is, referred to Estes Snedecor, one of the referees in bankruptcy of this court, to take such further proceedings therein as are required and permitted by said Act.

Witness my hand and the seal of said Court.

[Seal]                      LOWELL MUNDORFF,  
Clerk.

By /s/ E. M. DAVIS,  
Deputy.

[Endorsed]: Filed May 20, 1949.

[Title of District Court and Cause.]

### ADJUDICATION OF BANKRUPTCY

At Portland, in said district, on the 23rd day of May, 1949.

The petition of Rand Truck Line, Inc., filed on the 20th day of May, 1949, that it be adjudged a bankrupt under the act of Congress relating to bankruptcy, having been heard and duly considered.

It is adjudged that the said Rand Truck Line, Inc., an Oregon corporation is a bankrupt under the act of Congress relating to bankruptcy.

/s/ JAMES ALGER FEE,  
District Judge.

[Endorsed]: Filed May 23, 1949.

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[Title of District Court and Cause.]

### ORDER APPROVING TRUSTEE'S BOND

At a session of the Court of Bankruptcy, held in and for said District of Oregon, before Estes Snedecor, Referee in Bankruptcy, at Portland, Oregon, this 8th day of June, 1949.

The above-named Rand Truck Line, Inc., an Oregon corporation, having been duly adjudged a bankrupt on a petition filed by it on the 20th day of May, 1949; and Samuel A. McAllister of Portland in said District, having been duly appointed trustee of the estate of said bankrupt, and having duly qualified by giving a bond with sufficient sureties for



the faithful performance of his official duties in the amount fixed by the order of this court, viz., \$10,000.00; it is

Ordered that the said bond be, and it hereby is, approved.

/s/ ESTES SNEDECOR,  
Referee in Bankruptcy.

[Endorsed]: Filed June 9, 1949.

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[Title of District Court and Cause.]

### PROOF OF SECURED DEBT

At Sheridan, in the County of Yamhill, State of Oregon, on this 23rd day of June, 1949, comes Otto W. Heider of said county and state, and makes oath and says:

(1) That he hereinafter designates himself as claimant.

(2) That said claimant is doing business at the place aforesaid, and that said corporation in whose court proceedings this proof of debt is filed was at and before the aforementioned court proceedings were filed in said court, and still is, justly and truly indebted to said claimant in the sum of \$11,500.00. That the consideration of said debt is as follows: The paying off of prior, present and current obligations, notes, mortgages and liabilities of the Rand Truck Line, outstanding and existing on the 7th day of August, 1946, together with cash disbursements, and which prior evidence of indebtedness having been heretofore returned to the makers thereof.

That no part of the balance of said debt above set forth in the sum of \$11,500.00 has been paid; that there are no offsets or counterclaims against the said sum herein alleged to be due; that deponent has not, nor has any person for and on behalf of said claimant, or to this deponent's knowledge or belief, for claimant's use, had or received any manner of security for the said debt other than as herein stated, nor has any judgment been rendered for any part thereof, nor has any note or other evidence of debt been received except as herein stated and set forth.

Affiant further says said debt herein proven, and this claim are free from usury as defined by the laws of the state of Oregon wherein the debt was contracted.

That the said claimant reserves the right and/or constitutes and appoints ..... to attend any and all creditors' meetings of the aforesaid corporation in said proceedings above styled, for and in the name of the claimant, to vote for or against any proposal or resolution, and accept in writing or fail to accept in writing any proposal of composition or extension that may be submitted under the laws of the United States in said proceedings; to vote for the trustee, to object to confirmation of composition or extension offered in this proceedings; and to receive payment of dividends, distribution of moneys due claimant or which might be paid to claimant under any and all proceedings, and to act in said proceedings to claimant's interest with full power of substitution; and all other powers

of attorney heretofore given in regard to the above styled proceedings are hereby revoked.

That hereto attached and marked Exhibit "A" and made a part hereof as fully and completely as if incorporated herein is a combination real estate and personal property mortgage dated the 7th day of August, 1946, and filed with county clerk of Yamhill County, Oregon, on the 9th day of August, 1946, and recorded in Vol. 107, page 676, Record of Real Estate Mortgages of Yamhill County, Oregon, and was filed in the office of the Secretary of State at Salem, Oregon in the Record of Migratory Chattels, and which mortgage was executed by the Rand Truck Line, an Oregon Corporation, et al., as mortgagor, to H. H. Macy, Vern Markee, Florence Markee and Lorn Markee as mortgagees, and thereafter the said mortgage and promissory note hereto attached and made a part hereof was subsequently and on the 7th day of August, 1946, assigned and transferred for value, without notice and before maturity to the claimant who is now the owner and holder of said mortgage and promissory note herein set forth and described.

That in addition to the foregoing security, and as collateral security for the payment of the obligation herein set forth the following shares and certificates of stock in Rand Truck Line, Inc., were assigned, set over and transferred to the claimant, who is now the owner and holder thereof, and said stock is described as follows, to wit:

Certificate No. 27 for 930 shares, formerly owned by Beryl Taylor, dated April 18, 1949.

Certificate No. 26 for 615 shares, formerly owned by Rand Truck Line, Dated April 18, 1949.

Certificate No. 28 for 920 shares, formerly owned by Lorn E. Markee, dated April 18, 1949.

Certificate No. 25 for 920 shares, formerly owned by Harold H. Macy, dated April 18, 1949.

That the said claimant holds the certificates of title to said vehicles described in said mortgage, and is shown to be the legal owner thereof, and the same are briefly described as follows:

Cert. of Title No.	Year	Kind	Factory No.
A817044	1939	International tk.	8646
C1069501	1939	Chevrolet truck	T2639636 (Motor N
1179766	1935	Wentwin trailer	SP3103
1179543	1940	Trombly trailer	382
1143460	1936	Trailmobile tr.	SP3104
1179542	1926	Wentwin trailer	340
1143452		Utility trailer	59672
A1189570	1946	Transport van	M3L11022
1179767		Trailmobile tr.	17233
1179544	1944	Fruehauf trailer	C8632
748381	1937	International tk.	1552
1179545	1936	Trailmobile	D58507
A887489	1940	Int'l tractor	772
1162014	1945	Fruehauf tr.	C9031
A560350	1934	Int'l tk.	FAB4179 (Motor N
947019	1941	International tk.	1120
863473	1940	International tk.	1865
A667301	1936	International tk.	808
A948417	1941	Dodge tk.	9275402
1143451	1928	Wentwin & Irwin tra.	6290
D804590	1938	International tk.	3500
A842270	1939	International tk.	1203
B687345	1936	Chevrolet tk.	6RD0711149
A1124373	1937	Inter. tract.	DR60553
1014403	1942	Int'l tk.	3138
A1015945	1942	Int'l tk.	3115
C575985	1934	Dodge tk.	9243940

That said mortgage and note is in default in that \$1,000.00 was due on the 1st day of May, 1949, and only \$500.00 was paid on the 10th day of May, 1949, and \$1,000.00 was due on the first day of June, 1949, and no part of said monthly installment has been paid, and by reason of the breach of the terms and conditions of said mortgage the same is all due and claimant declares it all due and payable and the said mortgage is subject to immediate foreclosure, and the said note and mortgage bears interest at the rate of 8% per annum from the maturity of the monthly installments due and not paid.

/s/ OTTO W. HEIDER.

Subscribed and sworn to before me this 23rd day of June, 1949.

/s/ IRENE LAWRENCE,

Notary Public for Oregon,

My com. expires Nov. 9, 1951.

EXHIBIT A

(Original)

Mortgage

(Real and Personal)

Rand Truck Line

To

H. H. Macy, et al.

This Indenture, Made this 7th day of August in the year One Thousand Nine Hundred and forty-six,



between Rand Truck Line, an Oregon Corporation, Vern Markee, Florence Markee, his wife as mortgagors, and H. H. Macy, Vern Markee, Florence Markee and Loren Markee as mortgagee,

Witnesseth, That the said mortgagors for and in consideration of the sum of Forty-three thousand five hundred sixty 00/100 Dollars (\$43,560) to them paid by the said mortgagees, do hereby grant, bargain, sell and convey unto the said mortgagees and assigns those certain premises situated in the County of Yamhill, and State of Oregon, and described as follows:

Lot No. 5 and the North 15 ft. of Lot 6 of Block One of Morgan's Addition to the City of Sheridan, Yamhill County, Oregon, according to the duly recorded map and plat thereof, subject to any dedicated, vacated or conveyed rights heretofore by which there has been legally established an alley, easement or right-of-way for travel from the east end of the above-described property and the lots immediately to the east.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and which may hereafter thereto belong or appertain, and the rents, issues and profits therefrom, and any and all fixtures upon said premises at the time of the execution of this mortgage or at any time during the term of this mortgage.

To Have and to Hold the said premises with the appurtenances unto the said mortgagee and assigns forever.

This Conveyance is intended as a Mortgage to secure the payment of the sum of Forty-three thousand five hundred sixty and 00/100 Dollars (\$43,560.00) in accordance with the terms of a certain promissory note of which the following is substantially a copy, to wit:

It is understood definitely that the Rand Truck Line and/or mortgagors will do their own insuring as to public liability and property damage, fire, theft and collision at their own expense, and that the legal owner of said equipment and holder of this mortgage is under no obligation in connection therewith.

This mortgage is executed for a present and current consideration to take up present and outstanding obligations of mortgagor, and is not given for any past consideration.

This indenture is further conditioned upon the faithful observance by the mortgagors of the following covenants hereby expressly entered into by the mortgagor, to wit:

That they are lawfully seized of said premises, and now have a valid and unincumbered fee simple title thereto, and that they will forever warrant and defend the same against the claims and demands of all persons whomsoever;

That they will pay the said promissory note and all installments of interest thereon promptly as the same become due, according to the tenor of said note;

That so long as this mortgage shall remain in force they will pay all taxes, assessments, and other charges of every nature which may be levied or assessed upon or against the said premises when due and payable, according to law, and before the same become delinquent, and will also pay all taxes which may be levied or assessed on this mortgage or the debt thereby secured, and will promptly pay and satisfy any mechanic's liens or other incumbrances that might by operation of law or otherwise become a lien upon the mortgaged premises superior to the lien of this mortgage;

That they will keep all the improvements erected on said premises in good order and repair and will not commit or suffer any waste of the premises hereby mortgaged;

That so long as this mortgage shall remain in force they will keep the buildings now erected, or any which may hereafter be erected on said premises, insured against loss or damage by fire to the extent of \$ none in some company or companies acceptable to said mortgagee and for the benefit of said mortgagee, and will deliver all the policies and renewals thereof to said mortgagee.

Now, Therefore, if the said mortgagors shall pay said promissory note, and shall fully satisfy and comply with the covenants hereinbefore set forth, then this conveyance shall be void, but otherwise to remain in full force and virtue as a mortgage to secure the payment of said promissory note in accordance with the terms thereof and the perform-



ance of the covenants and agreements herein contained; it being agreed that any failure to make any of the payments provided for in said note or this mortgage when the same shall become due or payable, or to perform any agreement herein contained, shall give to the mortgagees the option to declare the whole amount due on said note, or unpaid thereon or on this mortgage, at once due and payable and this mortgage by reason thereof may be foreclosed at any time thereafter. And if the said mortgagors shall fail to pay any taxes or other charges or any lien or insurance premium as herein provided to be done, the mortgagees shall have the option to pay the same and any payment so made shall be added to and become a part of the debt secured by this mortgage, and draw interest at the rate of ten per cent per annum, without waiver, however, of any right arising from breach of any of the covenants herein.

In case a complaint is filed in a suit brought to foreclose this mortgage, the court shall, upon motion of the holder of the mortgage, without respect to the condition of the property herein described, appoint a receiver to collect the rents and profits arising out of said premises, and apply such rents and profits to the payment and satisfaction of the amount due under this mortgage, first deducting all proper charges and expenses attending the execution of such trust.

In the event of suit or action being instituted to foreclose this mortgage, the mortgagors and/or their

assigns shall pay such sum as the Court shall consider reasonable, as attorneys' fees for the benefit of the plaintiff, in addition to the costs and disbursements provided by statute.

As to the personal property the following shall apply: But if default shall be made in the payment of said debt, interest charges, or payments or any conditions of said mortgage, according to the terms of the said note or if first parties shall offer for sale, sell, assign, encumber or dispose of all or any part of said goods and chattels, or shall remove or attempt to remove all or any part thereof from the above-described premises without the written consent of the mortgagee or holder of this mortgage, whether said indebtedness shall be then due or not, or if the representations of first parties herein contained are in whole or in part untrue, then and from thenceforth it shall be lawful and the mortgagee, its agents, successors and assigns are hereby authorized to sell all or any part of the said property for cash at private sale or public auction for the best price that it can obtain and first parties waive personal notice thereof, or any other kind of notice, and the mortgagee may buy at such sale and the said property may be so sold in bulk or in parcels, or so much thereof as shall be necessary to satisfy the said debt, interest and charges, plus lawful expenses of sale, and reasonable attorney's fee, if any, and the mortgagee may retain all the said amounts out of the proceeds of said sale, and shall return the overplus, if any, to first parties; for the purpose of enforcing the provisions and conditions

hereof the mortgagee, its agents, successors and assigns are hereby authorized and empowered to enter upon the premises of first parties or any place where said goods and chattels or any part thereof may be found, and take possession thereof and dispose of the same as hereinbefore provided.

If there is only one first party to this instrument, all plural words used herein with reference to first parties shall be construed in the singular. Acceptance by the mortgagee or any holder of this mortgage, of any payment hereon after the same is due, shall not constitute a waiver by such holder of this or any other provision of this mortgage, and time is the essence hereof.

Any deficiency and shortage unpaid sale and seizure of the property herein described the mortgagor or mortgagors shall immediately pay, and do hereby confess judgment for such shortage or unpaid deficiency, and any circuit court in the state of Oregon shall have jurisdiction in the foreclosure of this mortgage; the chattel mortgage portion of this mortgage may be foreclosed by the holder thereof without the intervention of any court being taken, but in a summary manner as herein provided.

In Witness Whereof, the said mortgagors have hereunto set their hands and seals the day and year first above written. By resolution of its board of directors and its stockholders has caused these presents to be executed by its President, Secretary-Treasurer and General Manager, and its corporate seal to be hereunto affixed this 7th day of August, 1946.

[Seal]                RAND TRUCK LINE,  
                          A Corporation,

By /s/ FLORENCE MARKEE,  
          Secy.-Treas., Personally &  
          Individually.

[Seal]                RAND TRUCK LINE,  
                          A Corporation,

By /s/ VERN MARKEE,  
          President.

[Seal]                RAND TRUCK LINE,  
                          A Corporation,

By /s/ H. H. MACY,  
          General Manager.

/s/ LOREN E. MARKEE,

/s/ FLORENCE MARKEE.

### Acknowledgment

State of Oregon,  
County of Yamhill—ss.

On this 7th day of August, 1946, before me appeared Vern Markee, Florence Markee and H. H. Macy, to me personally known, who being duly sworn, did say that he, the said Vern Markee is the President, and she, the said Florence Markee is the Secretary-Treasurer, and he, the said H. H. Macy is the General Manager of the within named corporation, and that the seal affixed to said instrument is the corporate seal of said corporation, and that the said instrument was signed and sealed in

behalf of said corporation by authority of its Board of Directors, and the said Vern Markee, Florence Markee and H. H. Macy acknowledge said instrument to be the free act and deed of said corporation.

In Testimony Whereof I have hereunto set my hand and affixed my official seal, this, the day and year first in this, my certificate written.

[Seal]      /s/ IRENE LAWRENCE,  
Notary Public in and for Said  
County and State.

My commission expires Nov. 3, 1947.

Sheridan, Oregon, Aug. 7, 1946.

\$43,560.00

For value received I promise to pay to the order of H. H. Macy, Vern Markee, Florence Markee and Loren Markee at McMinnville, Oregon, Forty-three thousand five hundred sixty and 00/100 Dollars in lawful money of the present standard value, with interest thereon in like lawful money at the rate of 8% per annum from maturity until paid, payable in monthly installments of not less than \$1,000.00 in any one payment, together with the full amount of interest due on this note at time of payment of each installment. The first payment to be made on the 1st day of September, 1946, and a like payment on the 1st day of each month thereafter, until the whole sum, principal and interest, has been paid; if any of said installments are not so paid, the whole sum of both principal and interest, to become immedi-



ately due and collectible at the option of the holder of this note. In case suit or action is instituted to collect this note or any portion thereof, I promise to pay such additional sum as the Court may adjudge reasonable as attorneys fees in said suit or action.

[Seal]                      RAND TRUCK LINE,  
                                    A Corporation,  
By /s/ FLORENCE MARKEE,  
                                    Secy.-Treas.

[Seal]                      RAND TRUCK LINE,  
                                    A Corporation,  
By /s/ VERN MARKEE,  
                                    President.

[Seal]                      RAND TRUCK LINE,  
                                    A Corporation,  
By /s/ H. H. MACY,  
                                    General Manager.  
/s/ LOREN E. MARKEE.

Assignment & Guarantee

Sheridan, Ore., Aug. 7, 1946.

For value received I hereby guarantee the payment of the within note, consent to any extension of time granted the maker, and waive protest, demand and notice of non-payment thereof, and in case suit or action is instituted upon this guaranty for the collection of the within note, I promise to pay such

sum as the Court may adjudge reasonable as attorney's fees in such suit or action, all to the same extent as if I were a maker hereof.

/s/ VERN MARKEE,

/s/ FLORENCE MARKEE,

/s/ H. H. MACY,

/s/ LOREN E. MARKEE.

State of Oregon,  
County of Yamhill—ss.

On this the 7th day of Aug., A.D. 1946, personally came before me a Notary Public in and for said County and State, the within-named Loren E. Markee, and Florence Markee, his wife, to me personally known to be the identical persons who executed the within instrument, and acknowledged to me that they executed the same freely for the uses and purposes therein named.

In Testimony Whereof, I have hereunto subscribed my name and affixed my Notarial seal, the day and year last above written.

[Seal]      /s/ IRENE LAWRENCE,  
Notary Public in and for the  
State of Oregon.

My Commission Expires Nov. 3rd, 1947.

[Endorsed]: Filed June 30, 1949, Referee.

[Endorsed]: Filed October 23, 1956, U.S.D.C.

[Title of District Court and Cause.]

OBJECTIONS TO PROOF OF DEBT  
OF OTTO W. HEIDER

To: The Honorable Estes Snedecor, Referee in  
Bankruptcy:

I, Samuel A. McAllister, Trustee in Bankruptcy,  
do hereby object to the Proof of Debt filed herein  
by Otto W. Heider, an alleged secured creditor of  
the bankrupt herein, for the sum of \$11,500.00, upon  
the following grounds and reasons:

As My First Objection Thereto:

I.

I deny each and every allegation, thing and mat-  
ter contained in said Proof of Debt and the whole  
thereof, except as hereinafter specifically set out and  
admitted.

As My Second Objection Thereto, I allege:

I.

That said purported debt is the claimed balance  
upon a purported mortgage claimed to have been  
executed by the bankrupt herein under the follow-  
ing circumstances and conditions:

1. That on or about the 28th day of September,  
1944, and at a time when the assets of said bank-  
rupt did not exceed its liabilities and at a time when  
said bankrupt was operating at a net loss, Vern  
Markee, Florence Markee and Loren Markee pur-



chased 4,000 shares of the capital stock of the Rand Truck Line, Inc., from Robert R. Rand and Mrs. R. R. Rand, also known as Golda I. Rand; that Otto Heider loaned and advanced to the said Vern Markee, Loren Markee and Florence Markee, and paid to the said Robert R. Rand and Mrs. R. R. Rand, also known as Golda I. Rand, for and on their behalf to aid and assist them to purchase said stock, the sum of \$31,500.00; that the said Vern Markee, Florence Markee and Loren Markee attempted to bind and obligate the said Rand Truck Line, Inc., a corporation, to the payment of such personal obligations, namely, payment to Otto Heider of the moneys advanced by the said Otto Heider to the said Vern Markee, Florence Markee and Loren Markee individually for the purchase of said capital stock by causing the said bankrupt, acting through the said Vern Markee, Florence Markee and Loren Markee, to execute a purported note and mortgage in the face amount of \$43,560.00 including interest, in favor of Mrs. R. R. Rand, also known as Golda I. Rand, which said note and mortgage was immediately and as a part of the same transaction delivered to the said Otto Heider.

2. That between September 28, 1944, and until August 7, 1946, the officers, directors and stockholders of said bankrupt diverted and caused to be diverted to their own use and benefit and paid and caused to be paid to the said Otto Heider upon said purported note and mortgage large sums of money belonging to and owned by the bankrupt herein,

namely, approximately \$1,000.00 per month during said period; that on and at a time when there remained a purported balance of \$13,168.00 upon said alleged note and mortgage, a second and subsequent purported note and mortgage was executed by said parties, purporting to bind the bankrupt herein to pay said balance in addition to other moneys then advanced by the said Otto Heider on behalf of the said bankrupt; that thereafter said Vern Markee, Florence Markee, Loren Markee and other agents of said bankrupt continued to divert and cause to be diverted and paid to the said Otto Heider upon said purported second note and mortgage additional large sums of money belonging to and owned by said bankrupt, namely, approximately \$1,000.00 per month until the month of May, 1949; that as the result of such payment so made and so received by the said Otto Heider, more than \$40,000.00 of moneys owned by the said bankrupt were diverted from said corporation and the creditors of said corporation and applied upon the aforesaid individual debts and obligations of the stockholders of the bankrupt herein; that the said Otto Heider, with full knowledge that such sums of money belonged to and were assets of said bankrupt corporation, received and accepted the same and attempted to apply the same in payment of said personal obligations of the said stockholders. That no part of said sums have been repaid to the said bankrupt or to your trustee.

3. That during said period of time, namely, between September 28, 1944, and May 20, 1949, the

said bankrupt did not earn any profits, in excess of operating costs, and did not have nor acquire any surplus funds; that the debts and liabilities of the said bankrupt increased and continued to increase during said period, and remained unpaid to and including the date of adjudication in bankruptcy herein; that the moneys paid out and received as hereinabove alleged were not paid out of net profits or surplus; that the execution of said purported notes and mortgages and payment of the moneys paid out and received as aforesaid rendered and caused the bankrupt herein to become and be insolvent and bankrupt, and unable to pay its debts in the ordinary course of business, and with liabilities exceeding in amount the value of its assets, taken at a fair valuation and exclusive of such moneys so paid and received as herein alleged. That at the time of its adjudication in bankruptcy herein the said Rand Truck Line, Inc., was indebted to various firms and persons and corporations in a total approximate amount of \$40,000.00. That the execution of said purported notes and mortgages and the payments of money paid out and received as hereinabove alleged, hindered, delayed and defrauded creditors of the bankrupt herein, and were intended to and did deprive said creditors of the assets of said corporation and were intended to and did attempt to discharge the aforesaid personal obligations of the stockholders of the bankrupt herein to Otto Heider, to the detriment and damage of such creditors of said corporation.

4. That the said Rand Truck Line, Inc., received nothing of value nor any consideration whatsoever in return for the execution of the first note and mortgage or payment of such personal obligations of the stockholders; that the Articles of Incorporation of the said bankrupt give or grant to said corporation no power to pledge its credit or borrow money for or on behalf of its stockholders, directors, or any other persons whatsoever, or to purchase its own stock for and on behalf of itself or any other person; that the purported execution of the said alleged notes and mortgages, and the payment of said sums, as hereinabove alleged to the said Otto Heider, was and is beyond the power and authority of said corporation, its officers or directors.

And for My Third Objection to Said Alleged Proof of Debt, I allege:

I.

That on or about the 28th day of September, 1944, the said Otto Heider advanced for the use and benefit of the stockholders of the bankrupt herein the sum of \$36,500.00, and the said stockholders attempted to bind the bankrupt herein to repay the sum of \$43,560.00 in payment therefor, and caused said bankrupt to execute a note and mortgage purportedly agreeing to repay said sum of \$43,560.00; that included in the amount of said purported note and mortgage in addition to the alleged principal sum was the sum of \$7,060.00 as prepaid interest; that said prepaid interest was computed and in-



cluded at a rate and in amounts in excess of 10% per annum, namely, at a rate of approximately 10.40% per annum.

## II.

That subsequently thereto and after payments had been made by said bankrupt in the amount of \$30,392.00 upon said purported note and mortgage, with a claimed balance due thereon of \$13,168.00, or \$6,108.00 excluding said item of purported prepaid interest, in consideration of claimed advances of \$22,529.00 to the bankrupt, the stockholders of said bankrupt herein caused the said bankrupt to execute a purported note and mortgage in the amount of \$43,560.00, which note and mortgage purported to include the alleged balance upon said first note and mortgage of \$13,168.00, such claimed advances of \$22,529.00 and prepaid interest in the amount of \$7,533.00. That said prepaid interest was computed and included at a rate and in amounts in excess of 10% per annum, namely, at a rate of approximately 11.275% per annum if the prepaid interest item of said first purported note and mortgage is included in the alleged principal amount or approximately 28.1% if the prepaid interest item of said first purported note and mortgage is excluded therefrom.

## III.

That the purported agreements of the bankrupt to pay said sums representing prepaid interest were demanded and received by the aforesaid Otto Heider as the purported consideration for the alleged extension of time evidenced by said purported

notes and mortgages for the payment of said alleged debts and were included and added to the balances claimed to be due from the bankrupt to Otto Heider knowingly and with the intent on the part of the said Otto Heider to collect and receive and to have the said bankrupt pay interest on such claimed indebtednesses at a rate in excess of 10% per annum.

#### IV.

That the said Otto Heider received and accepted said purported notes and mortgages with full knowledge of the facts herein alleged.

#### V.

That funds of the bankrupt in excess of \$59,029.00 were paid to the said Otto Heider, and any purported balance claimed to be due to the said Otto Heider on said purported notes and mortgages were and are balances representing usurious interest charges computed at a rate in excess of 10% per annum, as hereinabove set out.

Wherefore, your trustee prays for an Order of this Court sustaining his objections, and all of them, to the said claim filed herein by the said Otto Heider, and for such other Orders as to this Court seem just and equitable.

/s/ SAMUEL A. McALLISTER,  
Trustee.

Duly verified.

[Title of District Court and Cause.]

NOTICE OF TIME SET FOR HEARING OF  
OBJECTIONS TO PROOF OF DEBT OTTO  
W. HEIDER

To: Otto W. Heider, Sheridan, Oregon:

You Are Herewith Notified that the hearing upon the objections to Proof of Debt filed by you in the above-entitled proceedings has been set for hearing before the Honorable Estes Snedecor, Referee in Bankruptcy, in Room 521, United States Court House, Portland, Oregon, on the 28th day of February, 1956, at the hour of 2:00 o'clock p.m.

Dated this 26th day of January, 1956.

/s/ C. X. BOLLENBACK,  
Attorney for Trustee.

Affidavit of service by mail attached.

[Endorsed]: Filed January 31, 1956.

[Endorsed]: Filed October 23, 1956, U.S.D.C.

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[Title of District Court and Cause.]

SUPPLEMENTAL OBJECTIONS TO CLAIM  
OF OTTO HEIDER

Comes now Samuel A. McAllister, Trustee and for his fourth objection to said Proof of Claim alleges as follows:

That said claimant is in effect asking this Court to foreclose upon his alleged mortgage, and the facts

and circumstances surrounding execution of said mortgage and the subsequent dealings between said claimant and the mortgagors are a violation of the "clean hands" doctrine and in fact are as follows:

1. That said loan on the part of said claimant was made to Verne Markee, Florence Markee and Loren Markee as a personal loan, but with the knowledge and consent of said claimant, the mortgage was executed to give the appearance of a corporate indebtedness and mortgage.

2. That the interest rate provided for by said claimant is usurious.

3. That said claimant accepted payments upon said mortgage which were in fact diversion of corporation assets with full knowledge that such assets were being diverted.

Wherefore Trustee renews his prayer that the claim of lien and claim of said Otto Heider be disallowed in its entirety.

/s/ SAMUEL A. McALLISTER.

State of Oregon,  
County of Multnomah—ss.

I, Samuel A. McAllister, being first duly sworn, depose and say:

That I am the trustee of the above-entitled estate in bankruptcy; that I have read the within and



foregoing petition, know the contents thereof, and the same are true as I verily believe.

/s/ SAMUEL A. McALLISTER.

Subscribed and sworn to before me this 14th day of March, 1956.

[Seal]      /s/ F. BROCK MILLER,  
Notary Public for Oregon.  
My Commission Expires: November 3, 1957.

[Endorsed]: Filed March 14, 1956, Referee.

[Endorsed]: Filed October 23, 1956, U.S.D.C.

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[Title of District Court and Cause.]

### MOTION TO DISMISS

To: The Honorable Estes Snedecor, Referee in Bankruptcy:

Otto W. Heider, a creditor of the bankrupt herein, moves the Court to dismiss the objections to proof of debt of Otto W. Heider on the ground that the Bankruptcy Court is without jurisdiction to entertain these objections because the same matter has been submitted to the Circuit Court for the State of Oregon, for the County of Multnomah, in the case of Samuel A. McAllister, Trustee in Bankruptcy for Rand Truck Line, Inc., a bankrupt, vs. Vern Markee, Florence Markee, his wife, Loren Markee, Harold Macy, Beryl B. Taylor and Otto Heider, Docket No. 190-145, by authority of the

Honorable Estes W. Snedecor, Referee in Bankruptcy.

/s/ WILLIAM E. DOUGHERTY,  
Of Attorneys for Creditor.

[Endorsed]: Filed March 14, 1956, Referee.

[Endorsed]: Filed October 23, 1956, U.S.D.C.

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[Title of District Court and Cause.]

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

(Claim of Otto W. Heider and  
Objections of Trustee thereto)

This matter having come on for hearing upon the 14th day of March, 1956, upon the claim of Otto W. Heider filed herein and the Objections of the Trustee thereto, the Trustee appearing personally and by and through his attorneys, C. X. Bollenback and F. Brock Miller, and Otto W. Heider, the Claimant herein, appearing personally and by and through his attorney, William E. Dougherty, evidence having been adduced upon the respective parties and the Court having considered the matter and being fully advised in the premises, make the following:

Findings of Facts

I.

That on or about the 28th day of September, 1944, Vern Markee, Florence Markee and Loren Markee

purchased 4,000 shares of the capital stock of the said Bankrupt from Robert R. Rand, Mrs. Robert R. Rand and a Mrs. Potts; that Otto W. Heider loaned and advanced to the said Vern Markee, Loren Markee and Florence Markee and paid to the said Robert R. Rand, Mrs. Robert R. Rand and Mrs. Potts, for and on behalf of Vern Markee, Loren Markee and Florence Markee, to aid and assist the said Markees to purchase said stock the sum of Thirty-Two Thousand Dollars (\$32,000); that the said Vern Markee, Loren Markee and Florence Markee attempted to bind and obligate the Bankrupt herein, Rand Truck Line, Inc., a corporation, to the payment of such personal obligation, namely, payment to Otto W. Heider of the monies advanced by the said Otto W. Heider to the said Markees individually for the purchase of such said capital stock by causing the said Bankrupt herein, acting through the said Markees, to execute a note and mortgage in the face amount, including prepaid interest, \$43,560, in favor of Mrs. Robert R. Rand, also known as Goldie I. Rand, which said note and mortgage was immediately and as a part of the same transaction assigned and delivered to the said Otto W. Heider.

## II.

That between September 20th, 1944, and August 7th, 1946, the officers, directors and stockholders of the said Bankrupt diverted and caused to be diverted to their own use and benefit and paid and caused to be paid to the said Otto W. Heider, upon said note and mortgage, large sums of money be-

longing to and owned by the Bankrupt herein, namely, Twenty-Four Thousand Five Hundred and No/100 Dollars (\$24,500): that on or about August 7, 1946, and at a time when there remained a balance of Thirteen Thousand One Hundred and Sixty-Eight and No/100 Dollars (\$13,168) upon said note and mortgage, a second and subsequent note and mortgage were executed by the said Rand Truck Line, Inc., to and in favor of the said Markees purporting to bind the Bankrupt herein to pay the sum of Forty-Three Thousand Five Hundred and Sixty Dollars (\$43,560) which sum included said balance and the sum of Twenty-Two Thousand Two Hundred and Fifty-Eight Dollars (\$22,258) then paid by the said Otto W. Heider to and on behalf of the Rand Truck Line, Inc., Bankrupt herein and pre-paid interest on said sums. That said note and mortgage was forthwith delivered to the said Otto W. Heider that thereafter the said Markees and other agents of said Bankrupt continued to divert and cause to be diverted and paid to the said Otto W. Heider upon said second note and mortgage additional large sums of money in excess of Thirty-Two Thousand and Sixty Dollars (\$32,060) belonging to and owned by the Bankrupt herein.

### III.

That the bankrupt herein received nothing of value nor any consideration whatsoever in return for the execution of the first note and mortgage or payment of such personal obligations of the stockholders. That the money paid to and on behalf of the

Bankrupt herein at the time of the execution of the second mortgage constituted and was a partial repayment of the monies theretofore diverted from said corporation; that at the time of and after such partial repayment there remained a balance still due said corporation by reason of such diversion the sum of Two Thousand Two Hundred and Forty-Two Dollars (\$2,242); that all of the subsequent diversion of funds from the corporation and its creditors and the payment thereof to Otto W. Heider were to the detriment of its then existing creditors and for the individual use and benefit of the stockholders of said corporation.

#### IV.

That as a result of such payments so made and so received by the said Otto W. Heider a net sum of not less than Thirty-Four Thousand Three Hundred and Two Dollars (\$34,302) of monies owned by the said Bankrupt herein were diverted from said corporation and applied upon the aforesaid individual debts and obligations of the stockholders of the Bankrupt herein; that the said Otto W. Heider with full knowledge that such sums of money belonged to and were the assets of said Bankrupt corporation received and accepted the same and attempted to apply the same in payment of said personal obligations of the said stockholders; that no part of said sums have been repaid to the said Bankrupt or to the Trustee herein.

#### V.

During the period of time between September 28, 1944, and May 20, 1949, the Bankrupt herein did not



earn any profits, in excess of operating costs, and did not have nor acquire any surplus funds; that the debts and liabilities of said Bankrupt increased and continued to increase during said period, and remained unpaid to and including the date of adjudication in bankruptcy herein; that the monies so paid out and received as hereinabove found, were not paid out of net profits or surplus; that the execution of the said notes and mortgages and payment of the monies paid out and received as aforesaid, rendered and caused the Bankrupt herein to become and be insolvent and bankrupt and unable to pay its debts in the ordinary course of business, and with liabilities exceeding in amount the value of its assets, taken at a fair valuation and exclusive of such money so paid and received as herein found; that at the time of its adjudication in bankruptcy herein, the said Rand Truck Line, Inc., Bankrupt herein, was indebted to various firms and persons and corporations in a total approximate amount of Forty Thousand Dollars (\$40,000); that the claims of some of such creditors existed prior to August 7, 1946, and continued to exist subsequent to August 7, 1946, up to and including the time the petition in bankruptcy was filed herein; that the execution of said notes and mortgages and the payments of money paid out and received as hereinabove alleged, hindered, delayed and defrauded the creditors of the bankrupt herein and were intended to by the parties to such transactions and did deprive said creditors of the assets of said corporation and were intended to and did

attempt to discharge the personal obligations of the stockholders of the Bankrupt herein, to Otto W. Heider, to the detriment and damage to said creditors of said Bankrupt.

## VI.

That the Articles of Incorporation of the said Bankrupt give or grant to such corporation no power or pledge its credit or borrow for or on behalf of its stockholders, directors or any other persons whatsoever to purchase its own stock for or on behalf itself or any other person. That the execution of the said notes and mortgages and the payment of such sums as hereinabove alleged was and is beyond the power and authority of said corporation, its officers or directors.

## VII.

That there was included in each of said mortgages hereinabove described prepaid interest at a rate and in an amount in excess of 10% per annum; that the agreements of the Bankrupt herein to pay such sums representing prepaid interest were demanded and received by the said Otto W. Heider as the consideration for the extension of time evidenced by said notes and mortgages for the payment of said debts and were included and added to the balances claimed to be due from the Bankrupt to Otto W. Heider knowingly and with the intent on the part of the said Otto W. Heider to collect and receive and to have the said Bankrupt pay interest upon said indebtedness at a rate in excess of 10% per annum; that the said Otto W. Heider received and accepted said notes and mortgages with full knowledge of the

facts hereinabove stated; that the said Otto W. Heider has received out of the assets of this corporation, funds in excess of any monies advanced by him to any person whatsoever as the result of any transactions hereinabove set out; that the balance represented by the claim of the said Otto W. Heider filed herein was and is a balance representing only interest charges computed upon such sums so advanced at a rate in excess of 10% per annum.

### VIII.

That Otto W. Heider has not been prejudiced by any delay in filing objections to his claim herein.

Based upon the foregoing Findings of Fact, the Court draws the following:

### Conclusion of Law

The claim of Otto W. Heider herein, based upon said notes and mortgages, should be denied.

Dated this 1st day of October, 1956.

/s/ ESTES SNEDECOR,  
Referee.

Affidavit of service by mail attached.

[Endorsed]: Filed October 1, 1956, Referee.

[Endorsed]: Filed October 23, 1956, U.S.D.C.



In the United States District Court for the  
District of Oregon

No. B 29,990—In Bankruptcy

In the Matter of:

RAND TRUCK LINE INC., an Oregon Corporation,

Bankrupt.

### ORDER

Based upon Findings of Fact and Conclusions of Law made and entered herein on the 1st day of October, 1956;

It Is Ordered that the purported notes and chattel mortgages held by Otto W. Heider, upon the assets of the bankrupt herein be, and the same hereby are, held to be void and of no effect whatsoever, and

It Is Further Ordered that the claim of the said Otto Heider filed herein, based upon the claimed balance due upon said notes and mortgages be, and the same hereby is denied and disallowed in all respects.

Dated this 2nd day of October, 1956.

/s/ ESTES SNEDECOR,  
Referee.

[Endorsed]: Filed October 2, 1956, Referee.

[Title of District Court and Cause.]

### PETITION FOR REVIEW

To: The Honorable Estes Snedecor, Referee in Bankruptcy:

The petition of Otto W. Heider, respectfully represents:

1. That your petitioner is a duly qualified creditor of the above-named Bankrupt.

2. That on the 2nd day of October, 1956, an order was made by the Referee herein, and filed in this Court, a copy whereof is hereto annexed, marked Exhibit A, and made a part hereof.

Your petitioner, being aggrieved by the said order, prays for a review thereof, and complains that the Referee committed error in making the said order in the following particulars:

a. The Bankruptcy Court was and is without jurisdiction to entertain the objections to the claim of your petitioner, upon which said order is based, because the same matter was by the direction and authority of the Referee in Bankruptcy submitted to the jurisdiction of the Circuit Court of the State of Oregon, for the County of Multnomah, in the case of Samuel A. McAllister, Trustee in Bankruptcy for Rand Truck Line, Inc., a bankrupt, vs. Vern Markee, Florence Markee, his wife; Loren Markee, Harold Macy, Beryl B. Taylor and Otto Heider, being Docket No. 190-145 in said Court.

b. The Referee in Bankruptcy should not have considered the objections of the Trustee to the claim

of your petitioner, upon which objections said order is based, because there was undue laches upon the part of said Trustee which had a material adverse effect upon your petitioner, in that the Trustee was to file any objections to the claim which he had after the hearing in this cause on July 6, 1949, but did not do so for nearly seven years thereafter, and accordingly the stale objections should not have been considered at the subsequent hearing on March 14, 1956.

c. That said order is not, in fact or in Law, supported by the findings of fact entered herein by said Referee.

d. That all parts of said findings of fact, material to the claim of your petitioner, are not only clearly erroneous but also false, as shown by the record in this proceeding.

Wherefore, petitioner prays that said order be reviewed by a Judge of this Court and that the Referee promptly prepare and transmit to the Clerk thereof his certificate thereon, together with a statement of the questions presented and a transcript of the evidence taken at the hearing, together with all exhibits therein offered.

TOOZE, KERR, HILL,  
DOUGHERTY & TOOZE,  
/s/ WILLIAM E. DOUGHERTY,  
Attorneys for Petitioner.

Affidavit of Service by Mail Attached.

[Endorsed]: Filed October 10, 1956, Referee.

[Endorsed]: Filed October 23, 1956, U. S. D. C.

[Title of District Court and Cause.]

CERTIFICATE OF REFEREE ON PETITION  
OF OTTO W. HEIDER FOR REVIEW OF  
REFEREE'S ORDER OF OCTOBER 2, 1956

To the Honorable Judges of the Above-Entitled  
Court:

Estes Snedecor, the Referee in Bankruptcy in charge of this proceeding, hereby makes this his certificate on the petition of Otto W. Heider for a review of the Referee's order entered October 2, 1956, denying and disallowing the chattel mortgage claim of Otto W. Heider.

Questions Presented

The questions presented are set forth in the Petition for Review, which accompanies this certificate.

Facts

A brief chronology of the proceedings will form a vivid and helpful background to the jurisdictional and other controversies under review.

Rand Truck Line, Inc., was adjudged a bankrupt upon its voluntary petition filed May 20, 1949. Immediately Beryl B. Taylor was appointed receiver to continue the operation of the trucks until the appointment of a trustee at the first meeting of creditors held June 7, 1949, at which time Samuel A. McAllister was appointed trustee.

In order to preserve the going values of the operating permits and to curtail operating losses, the

trustee very promptly on June 20, 1949, filed a petition challenging the validity of Otto W. Heider's mortgage and requesting an order requiring Heider to appear on July 6, 1949, and show cause why the property of the bankrupt should not be sold free from liens, the proceeds to be impressed with such liens as the court should determine to be valid. Heider appeared at the hearing and asserted a mortgage on the tangible assets of the bankrupt, upon which he claimed a balance owing of \$11,500, plus accruing interest.

Following this hearing on July 21, 1949, the Referee entered an order authorizing the sale of the tangible assets and operating rights of the bankrupt free from the lien of the mortgage claimed by Otto W. Heider, and providing that the proceeds of the sale be impressed with the lien of such mortgage or claimed mortgage, the court expressly reserving the right and power to determine the validity or amount due upon such mortgage.

After advertising and upon due notice to creditors, the property was sold to Clement M. Risberg for \$20,000 cash. The order authorizing the sale free from liens entered September 1, 1949, provided that the proceeds of the sale shall be impressed with the liens found upon the personal property so sold "with this court reserving the power to determine the validity and amount of all such liens."

On the same day, September 1, 1949, the trustee promptly filed a petition alleging that certain stock-



holders of the bankrupt had converted corporate funds to their own use, and had applied them to the payment of personal obligations owing to Otto Heider. The trustee requested authority to institute an action in the State Court against the stockholders and Otto Heider for the recovery of said corporate funds. An order was entered on the same day authorizing action. Such an action was filed in the Circuit Court of the State of Oregon for the County of Multnomah on September 19, 1949. This case has been pending in the State Court for more than 7 years upon various motions and demurrers and is still not at issue.

The action in the State Court is for the recovery of corporate funds and only indirectly involves the question of the validity of the Heider mortgage. The trustee finally decided not to await the outcome of the litigation against the stockholders and to invoke the summary jurisdiction reserved to the Bankruptcy Court for the purpose of determining the validity of the Heider chattel mortgage. Consequently, formal objections were filed to the mortgage claim and were heard before the Referee on March 14, 1956. During the hearing Heider was requested to produce a photostatic copy of the original mortgage to be marked Exhibit 32 and was given the privilege of introducing additional evidence in connection with the Long note if he so desired. In view of the complicated facts, Mr. Boll-enback agreed to submit a written summary of the evidence and to file the trustee's memorandum of



authorities. This was done on March 27, 1956. In the absence of an answering brief to be filed by Mr. Dougherty, Mr. Bollenback addressed a letter to the Referee with a copy to Mr. Dougherty requesting that the court set a time within which any additional evidence must be produced and briefs submitted by Heider. On June 12, 1956, the Referee addressed a letter to Mr. Dougherty referring to Mr. Bollenback's letter of May 28 and stating that Mr. Heider had failed to furnish the photostatic copy of the original chattel mortgage and that Mr. Dougherty had not submitted a brief upon the questions of law involved in the hearing before the court on March 14, 1956. The Referee advised Mr. Dougherty that, unless a brief was filed on or before June 25, the Referee would proceed to make findings upon the record now before the Court. Mr. Dougherty telephoned for additional time which was granted to him but no brief was filed and no request was made for the introduction of further evidence or for oral argument. Finally, on September 10, 1956, findings of fact and conclusions of law were submitted by Mr. Bollenback and copies were transmitted to Mr. Dougherty with notice that the Referee would consider these findings on September 20, 1956, and that any objection thereto must be filed before that date. On September 18 Mr. Dougherty addressed a letter to the Referee stating that he was engaged in a trial in the Circuit Court in Pendleton and requested that the time for filing objections be set over until Tuesday, September 25. Nothing further was heard from Mr. Dougherty,

so on October 1, 1956, the Referee entered Findings of Fact and Conclusions of Law, and on October 2 entered an order denying and disallowing the chattel mortgage claim of Otto Heider. A copy of the order was immediately mailed to Mr. Dougherty.

### Papers Submitted

Transmitted herewith are the following papers:

1. Proof of Secured Debt.
2. Objections to Proof of Debt of Otto W. Heider, filed January 31, 1956.
3. Supplemental Objections to Claim of Otto Heider.
4. Motion to Dismiss, filed by William E. Dougherty, March 14, 1956.
5. Findings of Fact and Conclusions of Law, filed October 1, 1956.
6. Correspondence between counsel and the Referee.
7. Order Denying and Disallowing Chattel Mortgage Claim of Otto W. Heider.
8. Petition for Review, filed by Otto W. Heider, October 10, 1956.
9. Transcript of Proceedings before the Referee on July 6, 1949.
10. Transcript of Proceedings before the Referee on March 14, 1956.
11. Trustee's Summary of Evidence, filed March 27, 1956.
12. Trustee's Memorandum of Authorities, filed March 27, 1956.

13. Trustee's Exhibits 1 to 13, inclusive, introduced at the hearing before the Referee July 6, 1949.

14. Trustee's Exhibits 14 to 18, inclusive, 19 to 29, inclusive, and Exhibit 33.

15. Claimant's Exhibits 20, 30 and 31.

Dated at Portland, Oregon, this 23rd day of October, 1956.

Respectfully submitted,

/s/ ESTES SNEDECOR,  
Referee in Bankruptcy.

[Endorsed]: Filed October 23, 1956, Referee.

[Endorsed]: Filed October 23, 1956, U.S.D.C.

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[Title of District Court and Cause.]

### ORDER

This matter having come on to be heard on the petition of Otto W. Heider for a review of the Referee's order entered October 2, 1956, denying and disallowing the chattel mortgage claim of Otto W. Heider; and

It appearing that there is ample support for the findings of fact and conclusions of law dated October 1, 1956, and the Referee's order dated October 2, 1956; and the Court being fully advised in the premises;

It Is Hereby Ordered that the petition for review be denied and the order of the Referee is hereby affirmed.

Dated this 28th day of March, 1957.

/s/ GUS J. SOLOMON,  
United States District Judge.

[Endorsed]: Filed March 28, 1957, U.S.D.C.

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[Title of District Court and Cause.]

### NOTICE OF APPEAL

Notice is hereby given that Otto W. Heider, a creditor of the bankrupt above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the order entered in this proceeding and dated March 28, 1957, wherein the above-entitled District Court ordered that the petition for review filed by said creditor be denied, and that the order of the Referee thereon be affirmed.

WILLIAM E. DOUGHERTY,  
Of Attorneys for Said  
Otto W. Heider.

[Endorsed]: Filed April 29, 1957.

[Title of District Court and Cause.]

## BOND FOR COSTS ON APPEAL

Know All Men by These Presents, that we, Otto W. Heider, as principal, and Glens Falls Insurance Company, a New York corporation, as surety, are held and firmly bound unto said S. A. McAllister, Trustee in Bankruptcy for the above-named bankrupt, as obligee, in the sum of Two Hundred Fifty Dollars (\$250), for the payment of which well and truly to be made to the said obligee we do hereby bind ourselves and our respective executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

The condition of this obligation is such that:

Whereas, said principal has heretofore filed a notice of appeal to the United States Court of Appeals for the Ninth Circuit from that certain order entered in the above-entitled proceedings on the 28th day of March, 1957, by the United States District Court for the District of Oregon.

Now, Therefore, if said principal shall prosecute his appeal to effect and pay all costs, if the appeal is dismissed or the judgment affirmed, or pay such costs as said appellate court may award if the judgment is modified, then this obligation shall be void; otherwise to remain in full force and effect.

In Witness Whereof, Otto W. Heider, as principal, and said Glens Falls Insurance Company, as



surety, have hereunto set their hands and seals this 3rd day of May, 1957.

/s/ OTTO W. HEIDER,  
Creditor and Appellant,  
Principal.

[Seal] GLENS FALLS INSURANCE  
COMPANY,  
A New York Corporation,  
Surety;

By /s/ [Indistinguishable],  
Attorney.

Countersigned:

JEWETT, BARTON, LEAVY  
AND KERN,

By /s/ [Indistinguishable],  
Resident Agent.

[Endorsed]: Filed May 9, 1957.

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[Title of District Court and Cause.]

### ORDER

Upon application of the appellant and good reason appearing therefor, as authorized by Rule 73(g) of the Rules of Civil Procedure, it is hereby

Ordered that the time for filing the record on appeal and docketing the appeal in this matter be, and hereby is, extended to and including July 8, 1957.



Done this 7th day of June, 1957.

/s/ GUS J. SOLOMON,  
Judge.

[Endorsed]: Filed June 7, 1957.

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[Title of District Court and Cause.]

### STIPULATION

It Is Hereby stipulated that the Court may extend the time for filing the record on appeal and docketing the appeal in this matter to and including July 27, 1957.

/s/ WILLIAM E. DOUGHERTY,  
Of Attorneys for Appellant.

/s/ C. X. BOLLENBACK,  
Of Attorneys for Appellee.

[Endorsed]: Filed July 3, 1957.

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[Title of District Court and Cause.]

### ORDER

Based upon the stipulation filed herein and good reason appearing therefor, as authorized by Rule 73 (g) of the Rules of Civil Procedure, it is hereby

Ordered that the time for filing the record on appeal and docketing the appeal in this matter be, and hereby is, extended to and including July 27, 1957.

Done this 3rd day of July, 1957.

GUS J. SOLOMON,  
Judge.

[Endorsed]: Filed July 3, 1957.

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[Title of District Court and Cause.]

### ORDER

Based on the motion of the appellant, and good reason appearing therefor, it is

Ordered that the Clerk of this Court forward to the United States Court of Appeals for the Ninth Circuit, in connection with the appeal of the above-entitled cause, all of the original documentary exhibits in accordance with the usual practice of this Court in regard to the safekeeping and transportation of original documents.

Done this 19th day of July, 1957.

GUS J. SOLOMON,  
District Judge.

[Endorsed]: Filed July 19, 1957.

United States District Court, District of Oregon  
B-29990

In the Matter of:

RAND TRUCK LINE, INC., an Oregon Corpora-  
tion,

Bankrupt.

July 6, 1949—10:00 A.M.

Before: Honorable Estes Snedecor,  
Referee in Bankruptcy.

Appearances:

MR. CLARENCE X. BOLLENBECK,  
Attorney for Trustee;

MR. S. A. McALLISTER,  
Trustee;

MR. MOE M. TONKON,  
Attorney for Bankrupt;

MR. BERYL TAYLOR,  
Manager, Rand Truck Line, Bankrupt;

MR. OTTO W. HEIDER,  
Creditor, in His Own Behalf;

MR. and MRS. VERN MARKEE,  
Witnesses;

MR. JOHN HICKSON,  
Attorney for Vern Markee.

## PROCEEDINGS

Proceedings in re Examination of Otto W. Heider  
and Vern Markee:

The Referee: This is the time set for the hearing of the order requiring Otto Heider to assert his claim of lien against certain assets belonging to the bankrupt estate. Mr. Heider has already filed, under date of June 30th, 1949, as required by the order a proof of secured debt in which he states that the bankrupt is indebted to him in the sum of \$11,500, being a balance due on notes and mortgages outstanding and existing on the 7th day of August, 1946. I suppose that means notes and mortgages dated as of that date. And to it is attached a mortgage dated August 7, 1946, made by the Rand Truck Line, an Oregon corporation; Vern Markee and Florence Markee, his wife, as the mortgagors, and H. H. Macy and Vern Markee, Florence Markee and Loren Markee, as mortgagees. Is that right?

Mr. Heider: Yes.

The Referee: This mortgage is given to secure an obligation of \$43,560 and it includes a piece of real estate in Morgan's Addition to the City of Sheridan and certain trucks and trailers and other equipment of the Rand Truck Line, and a long list of furniture, fixtures and equipment belonging to the Rand Truck Line. There is also attached the original note dated August 7th, 1946, executed by Rand Truck Line and Loren E. Markee in which they promise to pay to the order of H. H. Macy, Vern Markee, Florence Markee and Loren Markee

at [2\*] McMinnville, Oregon, \$43,560 with interest thereon at the rate of 8 per cent per annum from maturity until paid, payable in monthly installments not less than \$1,000 each, together with full amount of interest due on this note at the time of payment of each installment.

Mr. Heider, this appears to be an executed copy of the mortgage, but it does not have a filing mark on it.

Mr. Heider: I think there is one on file, too, in Multnomah County. They are recorded.

The Referee: In Multnomah County?

Mr. Heider: Yes.

The Referee: It was executed in duplicate?

Mr. Heider: Yes.

Mr. Tonkon: You mean Multnomah County or Yamhill County?

Mr. Heider: Both counties.

The Referee: Now, at the time Mr. Heider sent up this proof of claim he wrote me a letter in which he asked whether it would be necessary for him to appear today in view of the fact that he had filed his proof of claim, and I wrote acknowledging receipt of the claim and of his letter. I said, "The claim is deficient in that you did not include therein an itemized statement of monies disbursed or received by you in connection with any transactions or payments made in connection with said mortgage or the prior mortgage executed September 18, 1944." In that I was following the language [3] of the

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\*Page numbering appearing at top of page of original Reporter's Transcript of Record.

order. I said, "Please bring such a statement with you at the hearing scheduled in my courtroom on Wednesday, July 6, 1949, at 10:00 o'clock a.m. Also bring with you your original record showing receipts and disbursements in connection with the two mortgages. The hearing set for next Wednesday is for the purpose of receiving proof of the balance due on your mortgage and of all transactions in connection with it so that the Court may determine the validity of the mortgage and the amount owing thereon."

Now, you may proceed. I think possibly the best procedure, Mr. Heider would be for you to take the stand and produce the information and let counsel examine you in connection with it, and if you will just bring your briefcase up here and have a chair.

### OTTO W. HEIDER

was thereupon produced as a witness in his own behalf and, being first duly sworn, was examined and testified as follows:

The Referee: Do you have a summary or itemized statement?

A. Well, I brought these vouchers of disbursement on the first mortgage. That is the vouchers made to Mr. and Mrs. Rand. I thought they might want to look them over.

### Direct Examination

By Mr. Bollenbeck:

Q. You don't have an itemized statement as suggested by the order? [4]            A. That is it.



(Testimony of Otto W. Heider.)

Q. You don't have an itemized statement?

A. Yes, I do have.

Q. Where is it?           A. This is it.

Q. Do you have an itemized statement of the receipts of these monies?

A. You mean on the first mortgage?

Q. On both of them.

A. Well, I have—the first mortgage, I gave that back to Mr. Taylor. He has that.

Q. I am asking you about an itemized statement of the payments received and made by you.

A. On the first?

Q. On both of them.

A. You have the first one, the disbursements.

The Referee: Those are disbursements. We want to know what was received.

A. Here is a statement of the receipts on the first mortgage right there.

Q. (By Mr. Bollenbeck): This is your original record?           A. Yes; it is my original record.

Mr. Bollenbeck: Will you mark this?

(Document bearing title, "Payments by Mar-  
kee," so produced, was thereupon marked  
Trustee's [5] Exhibit 1.)

Q. (By Mr. Bollenbeck): Now, Mr. Heider, without me leafing through all these checks, can you tell me how much you disbursed on the mortgage?

A. \$36,500. That is, you mean on the Rand mortgage, the first mortgage?

Q. The first mortgage.

(Testimony of Otto W. Heider.)

A. I think it is \$36,500. I think that is a pretty close figure.

The Referee: You bought the Rand mortgage, didn't you?

A. Yes; I bought the Rand mortgage from Mr. and Mrs. Rand and Mr. Bollenbeck has it there.

Q. (By Mr. Bollenbeck): When did you buy it?

A. The date of the first check there. You have it there. Well, the date of the mortgage—if you give me the mortgage I can give you the exact date there if you like. I bought the mortgage shortly after this was executed, shortly after September 28, 1944.

Q. Did you prepare that mortgage?

A. Well, I prepared most of it. I think Mr. Rand had some attorney prepare some of it here in Portland, or check it, I don't remember just what.

Q. You prepared it, though, and then it was turned over to Mr. Rand's lawyer and checked?

A. Yes; he checked it. [6]

Mr. Bollenbeck: This is going to be a job, your Honor, checking through these checks, and I hesitate to take the time of the Court to do it at this time. I think that I would like to offer them in evidence as they stand and check them over at a later date.

The Referee: Well, you have some other questions?

Mr. Bollenbeck: Yes; I do, your Honor.

A. I think, Mr. Bollenbeck, there is a slip there attached to them.

Mr. Bollenbeck: Let me put them in evidence.

(Testimony of Otto W. Heider.)

(Sheaf of checks, so produced, was thereupon marked Trustee's Exhibit 2.)

The Referee: Does Exhibit 2 represent your checks, what you paid out for the mortgage?

A. What I paid out to the Rands for the mortgage. I think they are all there, although I am not certain.

The Referee: What is the amount you paid?

A. I think it is \$36,500, although I am not sure that is exactly accurate, but I think it is very substantially so, but I had difficulty in finding some of those old cancelled checks. It is five years old.

The Referee: Well, do you remember what your agreement was when you bought it?

A. Remember what?

The Referee: How much did you agreed to pay for it? [7]

A. That was it; that was correct.

The Referee: \$36,500?

A. \$36,500.

Q. (By Mr. Bollenbeck): Mr. Heider, don't you have a ledger sheet on a transaction of this size?

A. This is what I kept on this.

Q. This yellow sheet, Exhibit 1?

A. That was the original record. That was the original record, that is what you asked for.

Q. You didn't enter the payments into a cash book or anything else when you received them?

A. I didn't have a cash book. That was my record right there.

(Testimony of Otto W. Heider.)

Q. You didn't have any ledger to show the amount due on the mortgage?

A. A ledger to show the amount due—yes; that shows the amount due all the time right from the beginning.

Q. In other words, this yellow sheet, Trustee's Exhibit 1, is your sole and only record of this transaction, is that right?

A. That is my original record.

Q. What other records do you have?

A. I don't have any other with me, but that is what you asked for, my original record.

Q. What other records do you have?

A. Well, I have the cancelled checks. I gave them to you and you introduced them in evidence. [8]

Q. Yes. And what other records do you have?

A. I don't know that I have any others.

Q. No records at all?

A. Yes. I have the mortgage and I gave it to Mr. Taylor, and I gave the checks to you and you introduced them in evidence.

Q. Do you have any other records?

A. Not that I know of.

Q. Well, you would know of any others you have?

A. Well, I have some copies here of some checks, but those are not signed. Those are not originals. You asked for originals.

Q. Do you have any sort of a ledger sheet you carried on this transaction?

A. No ledger sheet. That is the transaction. Here

(Testimony of Otto W. Heider.)

is some copies. I don't think they would be of any value. They are not signed.

Q. Well, now, Mr. Heider, you knew when this first mortgage was prepared that you were going to end up owning it, didn't you?

A. No, I didn't know it at all; didn't know it at all.

Q. You didn't have any idea that you might be buying it?

A. I didn't know. Rand told me that he might want to sell it.

Q. Were you attorney for Rand?

A. No; I wasn't.

Q. Were you attorney for Markee? [9]

A. No; I wasn't.

Q. Then why does it happen that this mortgage provides that all insurance policies now on file with the Public Utilities Commissioner of the State of Oregon shall be left in the safekeeping of Otto W. Heider of Sheridan, Oregon?

A. You say why would they be left there?

Q. Yes. A. Well, I had a safe in my office.

Q. You didn't have any idea of buying this?

A. We hadn't made any deal on it yet; we hadn't closed up any deal on it.

Q. Before it was executed?

A. No, no. You mean I bought it before it was executed?

Q. Yes. A. No.

Q. Why was this inserted in here then, why was this provision in the mortgage?



(Testimony of Otto W. Heider.)

A. In the mortgage?

Q. Yes.

A. Well, I had probably been looking after it for Mr. Rand. He didn't hire me though but I probably was——

Q. How did it happen it was prepared in your office?

A. Oh, I was doing some work in my office and the parties were there and it was convenient. Mr. Rand was in town every week and it was a convenient location. [10]

Q. You didn't represent him as his lawyer?

A. I don't think Mr. Rand ever paid me a dollar attorney's fees.

Q. And you didn't represent Markees?

A. Oh, the Markees have had some legal work off and on, small amounts at different times, that I have done for them.

Q. Well, whom did you represent when you prepared this mortgage?

A. Well, I represented Mr. Rand.

The Referee: Did you represent the truck line?

A. No; I didn't. He had a firm of attorneys here in Portland, and I can't tell you who they were.

Q. (By Mr. Bollenbeck): Did you prepare the minutes of the meeting?

A. No; they had—I think Mr. Rand or Mrs.—they had somebody to keep the minutes of the meeting. I think I did type up some minutes of the meeting.

Q. You didn't type them up?

(Testimony of Otto W. Heider.)

A. Oh, I think some part of the minutes, not all of them.

Q. You didn't represent yourself in this transaction when you were preparing this mortgage?

A. Well, if I did anything, I didn't ignore myself, that is for sure.

Q. And you knew you were going to buy it?

A. Well, we talked about it, but we hadn't come to any meeting of minds. We had discussed it, that is right, we had discussed [11] it.

Q. Who computed the amount of interest and arrived at this figure of \$43,560?

A. Well, I imagine all parties involved did.

Q. Including yourself?

A. Well, I was there. I think all parties involved had a hand in it.

Q. Now, Mr. Heider——

(Promissory note, dated September 28, 1944, payable to Mrs. R. R. Rand and signed by Vern Markee, Loren E. Markee and Florence Markee, so produced, was thereupon marked Trustee's Exhibit 3.)

Q. (By Mr. Bollenbeck): Did you buy this mortgage at——

A. The interest was figured in and I bought it at a discount of the interest.

Q. You say you paid \$36,500 for it?

A. Yes; approximately right.

Q. And is that what the Rands were selling their stock to the Markees for?

(Testimony of Otto W. Heider.)

A. Oh, I don't know what they sold the stock to Markee for.

Q. What was the consideration for this mortgage?

A. Well, I just give you the cancelled checks a little bit ago.

Q. I know. Between the Rands and the Markees what was the consideration for the mortgage? [12]

A. They made their own deal. You would have to see Mr. Rand and Mr. Markee. You mean what the total sales price of the truck line was? I can't tell you that.

The Referee: Well, was this mortgage, did it represent all or part of the purchase price?

A. I understood it represented part, not all, of the purchase price. Now, as near as I can answer your question, is that I understood the sales price was somewhere between fifty and sixty thousand, the original sales price. As to that, I don't know, but that is my impression of the whole thing. What the original sales price and what that was, I can't give you that. I can't remember. It might have been discussed five years ago in my presence, but just what those figures are, I don't know.

Q. (By Mr. Bollenbeck): I will hand you Trustee's Exhibit 3 for identification, which is the original note signed by Vern Markee and Florence Markee and endorsed by Mrs. R. R. Rand without recourse or liability, and ask you why that kind of an endorsement was put on there?

A. You would have to see Mrs. Rand about that

(Testimony of Otto W. Heider.)

because I imagine that is the way she wanted it. Why she put it on there you would have to consult her.

Q. Why did you accept it that way?

A. Why did I have to accept it any particular way?

Q. Why did you accept it that way? [13]

A. Well, what way did you want me to accept it?

Q. I mean, if this was a bona fide sale of this mortgage after it was executed, why did you accept that kind of an endorsement?

A. Well, I have accepted those kinds of endorsement lots of times. Why shouldn't I?

Q. Why did you?

A. Because I accepted it.

Q. As a matter of fact, Mr. Heider, you knew you were going to finance this mortgage before it was executed?

A. No; I didn't know anything about it. I knew we talked about it but I couldn't guarantee I was going to buy it; I couldn't guarantee it at all.

Q. Who is Irene Lawrence?

A. She is a stenographer in my office.

Q. She notarized this mortgage?

A. Yes; she did; that is her signature.

Q. The mortgage is dated September 28, 1944. Now, when did you—when was it assigned to you?

A. Well, you must have the assignment there. If you will hand it to me I will read the date for you.

Q. I have an assignment of the second mortgage but not of the first.

(Testimony of Otto W. Heider.)

A. Well, I think Mr. Taylor got it all together so it must be over in his office. [14]

Q. Well, considering the date of execution of September 28, 1944, when was it assigned to you?

A. Well, the assignment will speak for it on it. I can't tell you because I think Mr. Taylor got it with the mortgage and you will have to get it from him.

Q. Did you record the assignment?

A. I don't remember whether the assignment was recorded or not. My impression was that it was not recorded, although I wouldn't be sure.

Q. How long before you made your first payment to the Rands was the assignment taken?

A. Well, from the cancelled checks——

Q. Just answer the question.

A. Oh, I don't remember five years ago. I can't remember, nor neither would you.

Q. Was the assignment made simultaneous with the first payment?

A. I don't recall. If you got the assignment I can tell you; if you will produce the assignment, and that will refresh my memory five years back, but I can't do the impossible.

Q. You have the assignment as far as I know.

A. No; I haven't got it. Mr. Taylor has.

Q. When did you decide to buy this mortgage?

A. Shortly after it was executed. That is what I told you.

Q. How shortly after?



(Testimony of Otto W. Heider.)

A. I don't know. I can't give you the hour or day. [15]

Q. Was it within twenty-four hours?

A. I wouldn't say. It might have been forty-eight hours.

Q. Might have been forty-eight hours?

A. Might have been a week or two weeks, but I think the assignment will show pretty well. That is perhaps a copy of the assignment you have there.

Q. That is the second mortgage.

A. If you will show me the date of the first check there——

Q. I just want you to fix the date of the assignment without seeing the first check.

A. I can't fix the date five years. Can you remember any transaction that happened in your office, the date and hour, five years ago?

Q. Well, if it involved \$43,500 of my money I would.

A. Well, you are a lot smarter than I am; I will give you credit for that.

Q. Now, Mr. Heider, you knew what this transaction involved, that it was at least part payment of the stock of the Rand Truck Line?

A. Oh, I realized it was payment of most of the tangible assets of the Rand Truck Line. That was my understanding.

Q. Well, that was symbolized by a sale of the stock, wasn't it? The assets themselves were not sold to anybody?

A. Yes; I suppose symbolized by the stock.

(Testimony of Otto W. Heider.)

Q. So it was a sale of the capital stock of the Rand Truck [16] Line?

A. Yes. I understand Mr. Rand parted with all his interest in the Rand Truck Line. I understood he was entirely out.

Q. And did you take the capital stock as additional stock for security of this mortgage?

A. I think I had the original stock, and I have the new stock now. Now, the original stock—I can't tell you where that is. I think that was returned, most of it, to Mr. Taylor and the different ones, the different parties, and then was taken up by the new stock. Now, I can't tell you what parties got that stock but there was four or five different ones that got the old original stock, but I have the new stock here with me today.

Q. Now, you knew that this money that was being paid out to the Rands on this mortgage and would be repaid to you by the corporation?

A. Yes, by the corporation.

Q. That it was in payment of a debt that the corporation didn't owe?

A. It was payment of a debt the corporation didn't owe?

Q. Yes.

A. Well, of course, I understood it was a debt the corporation did owe, so I was——

Q. Well, you knew it was part of the purchase price of the sale of this stock, didn't you? You stated that. [17]

(Testimony of Otto W. Heider.)

A. Well, it was of all the tangible assets of the corporation. I knew that.

Q. Now, Mr. Heider, you are a lawyer and you know there is a lot of difference between the sale of the assets of the corporation and the sale of the capital stock.

A. I don't practice law enough—you do all the time, you are in court probably ten times as much as I am, but I don't practice in court enough to—to sell the tangible assets and the stock, it means the same thing to me, because you are passing over all the tangible assets when you sell. It means the same thing to me.

Q. You know the physical assets of this corporation did not change hands as a result of this transaction, they were still owned by the Rand Truck Line, weren't they?

A. The management and personnel and all changed hands.

Q. The tangible assets were still owned by the same corporation that owned them prior to this transaction, weren't they?

A. There was a change made in the corporation there and I can't tell you what that was. There was a change made in the corporation at that time.

Q. Now, just answer my question.

A. Well, the business continued as before.

Q. Yes.

A. Yes, that is right. The same assets were operated, the same rolling stock. [18]

(Testimony of Otto W. Heider.)

Q. There was no transfer of title of the tangible assets of the Rand Truck Line, was there?

A. Well, I think there was. I think the certificates of title were transferred.

Q. To whom?

A. They were transferred on the records of the Secretary of State's office.

Q. To whom? A. To the Rand Truck Line.

Q. Who had owned them prior to that time?

A. Some of the titles were in Rand's name individually, R. R. Rand, and they were transferred over to the Rand Truck Line.

Q. Was that part of the consideration for this transaction?

A. Well, it was handled all substantially at the same time so I suppose it was part of the whole transaction, yes.

Q. And how many years have you practiced law, Mr. Heider? A. Thirty-five.

Q. And you are sitting up there and telling me that that is what your conception of this transaction is?

A. Yes. When you transfer all the stock it amounts to the same thing as transferring all the assets of any corporation. Yes. That is my idea of it, that you can't sell the assets to one person and stock to another person of any corporation, you can't split up that way; it won't work.

Q. Now, Mr. Heider, can you tell us from whom these payments [19] were received?

A. Well, they were received from the Rand

(Testimony of Otto W. Heider.)

Truck Line, from the earnings of the Rand Truck Line, that is right.

Q. Do you know whether any of the officers or directors of the Rand Truck Line had any outside income?

A. Mr. Macy over there, or whether Loren Markee had any outside income, I don't know. Whether they had any other business, I don't know.

Q. Well, you stated emphatically it came from the earnings of the Rand Truck Line.

A. And so far as I knew, that was my information.

Q. You don't know who paid them to you?

A. Oh, whoever happened to be the manager at the time. Mr. Taylor paid—I don't know whether he was the manager—I don't think he was in the beginning, but when he became manager he paid the payment and prior to that time whoever was in charge paid them.

Q. Now, can you tell me from this Trustee's Exhibit 1 what the balance was at the time of refinancing?

A. \$13,168.

Q. All right; now, let's get down to the second transaction. Have you got the original of the second mortgage?

A. Well, I think the Court—yes—has it there. I have a substantial copy of it.

Q. Now, what disbursements did you make when you took the [20] second mortgage?

A. Well, here is the cancelled vouchers right



(Testimony of Otto W. Heider.)

here. That was a certified check. There you are. You better put this with it.

Q. \$13,168?

A. I believe that is correct. I think you have an adding machine tape there on it, the same figure.

Q. You have handed me a First National Bank of Sheridan, Oregon, statement dated August 7, 1946, representing the certified check to Rand Truck Line for \$5,000.

A. That is right.

Q. Also a check dated August 7, 1946, to the Rand Truck Line, Inc., and Transport Bodies & Equipment Company for \$3,000, a check, the Rand Truck Line, dated August 7, 1946, for \$5,000, and a check to the Rand Truck Line for \$4,508 dated August 14, 1946. Now, that, those total, those four items total \$17,508, and you have a balance of \$13,168. That is a total of \$30,706, according to my computations. Now, how did you arrive at the rest of the balance of this \$43,560 on the second mortgage?

A. I think you made a mistake in your computation. Yes, you have.

Q. I will be glad——

A. You add it again and you will find your total is \$36,027.

Q. I noticed on your adding machine data you have more than four items and now you have only delivered the evidence of four of them. [21]

A. I don't know what item—you got the items there. This is one of the items right here, and this one here, and there they are, that makes the correct amount.

(Testimony of Otto W. Heider.)

Q. Now, in addition to these four checks that you have submitted to me you have submitted a chattel mortgage payable to Earl Walden or Otto W. Heider upon certain equipment with the principal of \$1,080.

A. That was taken up at the time of the second mortgage.

Q. Who is Earl Walden?

A. Earl Walden?

Q. Yes. A. I don't know him.

Q. You don't know him?

A. Earl Walden?

Q. Walden (spelling), W-a-l-d-e-n.

A. I think he might be an employee of Rand Truck Line.

Q. Why was the mortgage made payable to him or to you?

A. Well, that was to either one of us.

Q. Why? A. Why not?

Q. Just answer the question without arguing with me. You are a witness here today, not a counsel.

A. I guess the mortgage can be drawn any way you want to draw it.

Q. Why was it drawn that way?

A. I don't know except that it was drawn that way. [22]

Q. Who drew it?

A. Hand me the mortgage. Maybe I can tell you. Earl Walden. I think he was an employee of the truck line. The note is just Earl Walden. Earl

(Testimony of Otto W. Heider.)

Walden is not named in the mortgage—or—I am not named in the note.

Q. Now, was that mortgage drafted in that fashion?

A. It subsequently was transferred to me, or I took it at the time.

Q. Well, did you advance any money on it?

A. Why, I did advance money on it.

Q. I mean when it was originally executed?

A. Well, now, on the date of my advance I can't tell you, but I did some time in the month of July, 1946——

Q. Prior to the time it was included in this second mortgage?      A. Yes; that is right.

Q. How much money did you advance on it?

A. Oh, I think \$1,050, \$1,050.

Q. To whom did you advance it?

A. I think Rand Truck Line.

Q. Do you have the voucher on that?

A. No; I couldn't find the voucher on that; I don't have——

Q. You don't have that cancelled check?

A. No; I don't have that cancelled check with me.

Q. Do you have it at Sheridan?

A. I don't know. I couldn't find it when I went through my [23] files yesterday.

Q. Who arranged for this mortgage for the Rand Truck Line?

A. Well, H. H. Macy, general manager at the time.

(Testimony of Otto W. Heider.)

Q. Do you remember that is who it was or is that what you are taking from the document?

A. That is Mr. Macy's signature. I think I am familiar enough with his signature to know that is it.

Q. He came to your office and wanted to arrange the loan?

A. I think that is right.

Q. And your office prepared this mortgage, didn't it?

A. I think it did.

Q. Miss Lawrence is on as Notary Public?

A. Yes.

Q. Now, why was the note and mortgage taken in the name of Earl Walden?

A. Well, Earl Walden had something to do with it, and I can't tell you just what he had to do with it at the time. I didn't know Earl Walden too well. I think I had met him, and just who he is I can't tell you at the moment.

Q. On these mortgages with prepaid interest, what interest did you compute that prepayment at?

A. Oh, the interest I think was computed on the basis of 10 per cent per annum compounded semi-annually.

Q. 10 per cent per annum compounded semi-annually?

A. Yes. [24]

Q. This is a mortgage dated July 7, 1946.

Mr. Tonkon: Not the basic mortgage.

Q. (By Mr. Bollenbeck): The same interest rate?

A. Yes.

Mr. Tonkon: But the interest was included in the outset in the basic mortgage, that is my point.

(Testimony of Otto W. Heider.)

Mr. Bollenbeck: Yes, only after maturity.

Q. Now, Mr. Heider, I am going to hand you a note and mortgage given apparently by the Rand Truck Line, rather to Rand Truck Line by Vern Markee and ask you to explain that mortgage.

A. Oh, that was a mortgage that was taken up at this—this is a mortgage that was taken up in that second mortgage you mentioned.

Q. Now, how did you happen to get that mortgage?

A. I suppose it was left with me when that second transaction was taken care of, when that second mortgage was made.

Q. Do you mean in that second mortgage that you bought that mortgage off of Vern Markee?

A. This balance was deducted out on that second mortgage, that is right.

Q. Now, let me get this straight. This is a mortgage that Vern Markee gave to the Rand Truck Line, right?

A. Yes; individually; he executed it individually.

Q. And then did you buy this mortgage from the Rand Truck Line?

A. I bought the mortgage. [25]

Q. When?

A. Well, shortly after its execution.

Q. Well, now, how shortly after its execution? It was executed in your office.

A. Oh, I suppose two or three days.

Q. As a matter of fact, it was simultaneous, wasn't it?

A. Well, very shortly afterwards.



(Testimony of Otto W. Heider.)

Q. That was done with the intention of you buying that mortgage?

A. Well, you mean that I give him the money with the intention of passing it to him?

Q. You knew you were going to pay out the money at the time you executed the mortgage?

A. Yes; on that mortgage I am sure I did.

Q. And how much did you pay for that?

A. Oh, I think about \$5,100.

Q. Did you have the cancelled vouchers for that?

A. No; I didn't find the cancelled voucher for that.

Q. Do you keep all your cancelled checks in one place?

A. No—well, I keep them in the back room in files. That had a balance on—that one at the time the second mortgage was written—I think it is written on the note there.

Q. You mean you lost your October, '45, and November, '45, cancelled vouchers?

A. Well, I don't think they are lost; I think they are misplaced. I am not sure that they are lost. [26]

Q. Do you remember exactly how much money you paid Rand Truck Line for this mortgage in the beginning? A. I don't remember exactly.

Q. How was it paid? Was it paid in cash?

A. Cash and check.

Q. Well, now, do you mean you paid some of it in currency?

(Testimony of Otto W. Heider.)

A. Some of it in currency and some of it by check.

Q. Do you ordinarily do business with currency?

A. Oh, I do quite frequently where I have something to show for it.

Q. And then we have here, Mr. Heider, a conditional sales contract whereby the Rand Truck Line has purchased from you—wait a minute.

A. You are mistaken.

Q. Let me get this straight. This conditional sales contract, dated April 9, 1946, wasn't the Rand Truck Line buying that Fruehauf truck from you, or semi-trailer?

A. Yes; they were buying this from me. There is a balance on this one. You have it here.

Q. What is the balance on this?

A. \$1,721. That is on the 7th day of August, 1946.

Q. And that was at the time the second mortgage was made?

A. Yes; that is the time the second mortgage was made.

Q. Now, referring back again to this Vern Markee note and mortgage to the Rand Truck Line that you bought from the Rand [27] Truck Line, apparently that shows a balance of \$2,550 as of the date of the second mortgage.

A. Yes, that is right. And this shows a balance as of that date of \$1,721.

Q. And this Earl Walden note and mortgage,

(Testimony of Otto W. Heider.)

what was the balance on that at the time of the second mortgage?

A. Well, I guess there had been nothing paid on that, no part paid on that.

Q. And you figured that in at \$1,080?

A. I think it is on the slip there. You have it.

Q. For \$1,080 on your slip when you wrote the second mortgage, is that right?

A. If you will hand me the slip. That is right.

Q. Now, these items that we have been referring to, this certified check slip for \$5,000, this check to Rand Truck Line and Transport Bodies for \$3,000, the check to Rand Truck Line for \$5,000 and the check for Rand Truck Line for \$4,508, and \$1,080 on the Earl Walden note and mortgage, \$2,550 on the Vern Markee note and mortgage, and \$1,721 on the conditional sales contract, that is what was taken up in the second mortgage?

A. Yes; that is right.

Q. How did you happen to buy this or sell this Fruehauf trailer to Rand Truck Line?

A. You mean why did I sell it?

Q. Where did you get it before you sold it to them? [28]

A. I can't tell you where it came from.

Q. Was it Rand Truck Line's equipment?

A. Well, I don't know whether it was Rand Truck Line equipment or not. I'd have to trace the ownership of that, that is the prior ownership, through the Secretary of State's office, which could be done very well. Whether I bought it direct from

(Testimony of Otto W. Heider.)

Fruehauf or not, I couldn't tell you about that. It is possible that I did. It is in '45 so I might have bought it from Fruehauf.

Mr. Bollenbeck: I would like to offer these documents in evidence, your Honor.

The Referee: Put them all together with the adding machine tape and we will offer them as one exhibit.

(Mortgage dated July 11, 1946, and accompanying papers, so produced, were thereupon marked Trustee's Exhibit 4.)

Q. (By Mr. Bollenbeck): Now, Mr. Heider, you show a balance of \$36,027 as being these items to which we have just referred. The second mortgage is \$43,560, is that right? A. That is right.

Q. What is the difference, what represents the difference between those two figures?

A. The interest.

Q. Now computed at what rate?

A. At 10 per cent compounded [29] semi-annually.

Q. Now, among these items that you have stated is included this Earl Walden note dated July 11, 1946, in the amount of \$1,080, is that right?

A. Yes; that is included in the second mortgage.

Q. And that mortgage is dated July 11th, 1946, about 28 days prior to the execution of the second mortgage, is that right?

A. Yes; something like that.

(Testimony of Otto W. Heider.)

Q. And that Earl Walden mortgage provides for payments over a period of one year, is that right?

A. That is right.

Q. And in this \$1,080 that you have made this note for, it includes prepaid interest for the year?

A. That is right.

Q. Now, this Vern Markee mortgage is dated October 31, 1945, is that right, and there is a balance on it at the time of the second mortgage of \$2,550, is that right?

A. I think so, yes, a balance on it on August 7th, 1946—that is about a year after its execution—that is right.

Q. And that mortgage, note and mortgage, also provides that it shall run a year?

A. It did run a year, about.

Q. It provides for payment thereof in monthly installments?

A. That is right.

Q. And twelve monthly installments. And interest was computed in advance on that note and mortgage, too, was it not? [30]

A. I think so.

Q. And that the yearly period had not run on that note and mortgage before it was incorporated in this mortgage of August 7th had it either?

A. Almost.

Q. Not quite?

A. But there were a lot of delinquent payments from overdue interest on it. There was overdue interest on delinquent installments.

Q. Just a minute, Mr. Heider. From August 7,



(Testimony of Otto W. Heider.)

1946, to October 31, 1946, that period of the mortgage had not run yet?

A. No, that two months had not run.

Q. Now, Mr. Heider, when you took this second mortgage, at that time did Vern Markee owe you any money personally?

A. Oh, at that time I don't recall whether he did or not. He might have owed me some.

Q. Did you hold a mortgage on any of his property at that time?

A. Well, now, he might have—I did sell him and Mrs. Markee a house but what date I sold it to them—where they now live—I don't remember the date of that. They still owe me some on their residence yet, and I can't tell you the date of sale of the house, and if the date of sale of that house was prior to August 7th they did owe me on the house.

Q. Well, now, how much did you sell them the house for?

A. I think it was \$8500 or \$9000. [31]

Q. Well, Mr. Heider, don't you know?

A. Do you know every transaction you transacted in your office in the last three years? You don't know and you know you don't. Do you keep every item that you transacted in your office in your mind?

Q. Wasn't this formerly your home?

A. Yes, I lived there, but I didn't move the home away from there where it was located.

Q. Don't you remember what you sold your home for?

A. Well, I think it was \$8500 or \$9000, I

(Testimony of Otto W. Heider.)

wouldn't say which. I don't carry all those things in my mind and I don't think you do either. It don't make sense.

Q. How much is due and owing on that home now? A. Well, I can tell you approximately.

Q. All right, tell me approximately.

A. I think about \$6000, although I am not just sure. That is very close, though.

Q. Is that in the form of a conditional sales contract or mortgage?

A. Conditional sales contract.

Q. Conditional sales contract?

A. I think that is right.

Q. Are the payments being made promptly?

A. Yes, very good, no objection at all.

Q. Did you ever receive any checks from Rand Truck Line in [32] payment of that house?

A. No, I think Mr. Markee made them all individually, I am sure he did.

Q. Now, what is the legal description of that house, do you know what addition it is in?

A. Yes, it is in Block 11, Falkner's Addition, Sheridan. That description is by metes and bounds because it is a block divided up by metes and bounds and isn't platted off into lots. It is right across from the Catholic Church in Sheridan, across the street.

Q. Now, Mr. Heider, when you executed this second mortgage, in addition—first of all, let me ask you this: Did you prepare this second mortgage in your office?

(Testimony of Otto W. Heider.)

A. I think it was prepared in my office.

Q. Will you tell me why the mortgage was executed in the form it is in that it wasn't a direct mortgage from the Rand Truck Line to you?

A. Well, one of the reasons on that—for the same reason the banks execute the mortgage in the same manner so there is individual liability there. The banks, U.S. and First National both are using the same form, to get individual liability. I take it that is the reason.

Q. Is that why the original mortgage was made to Mrs. R. R. Rand?

A. Oh, Mr. and Mrs. Rand were the original owners.

Q. But, I know—— [33]

A. There was no—I don't think when they sold there was any outside stockholders.

Q. Is that why the original mortgage that you held was made payable to the Rands instead of to you?

A. They were the sellers.

Q. Why did you prepare the original mortgage to Rands instead of to you?

A. That is the way they wanted it prepared.

Q. But this second mortgage was executed to the Macys and Markees by the Company and then transferred to you so that you would have the individual liability of the stockholders, is that right?

A. Yes, they were the principal stockholders at that time, all of them, or, in fact, I think they were the only stockholders.

(Testimony of Otto W. Heider.)

Q. Why did you include this property in Morgan's Addition?

A. Well, that was where the terminal was located, if I recall.

Q. Whose terminal?

A. Well, Mr. Markee's terminal. That terminal never was owned by the Rand Truck Line.

Q. Is that Markee's terminal?

A. It is Markee's individual terminal.

Q. Markee was mortgaging his terminal to himself and you were buying the mortgage, is that the way it worked out?

A. He and his wife signed the mortgage.

Q. To himself? [34]

A. Well, there were other signers with him, there were other signers on the mortgage, instead of making a separate mortgage they all signed on the same mortgage.

Q. Now, why did you include that terminal?

A. It was included as additional security.

Q. Did Markee owe you any money on that terminal prior to that time?      A. I think not.

Q. Did you ever have a mortgage to the terminal?

A. No, I never had a mortgage on it. Mrs. Haas at Sheridan had a mortgage.

Q. Did you pay that mortgage off for Mr. Markee?

A. No, I think Mr. Markee paid it off himself.

Q. Was it paid off before or after this second mortgage was executed?

(Testimony of Otto W. Heider.)

A. Now, as to date of payment—Mrs. Haas advanced the money to Mr. Markee to build it personally. I know about the transaction, but I can't tell you what date it was paid off, whether it was before or after, but I think he paid it off by the month.

The Referee: We will recess for five minutes.

(Short recess.)

Q. (By Mr. Bollenbeck): Now, Mr. Heider, you stated that you had never had anything to do with the business affairs of the Rand Truck Line, is that right? [35]

A. Oh, I never was their attorney. They had attorneys here in Portland. I don't know who they were, but they had, I think had, attorneys on a retainer by the year.

Q. Did you ever have their minute book, keep the minute book or by-laws in your possession?

A. Oh, I did some notary work for them, some odd jobs.

Q. I am not talking about notary work, I am talking about keeping the corporation records.

A. Oh, I never kept the corporate records.

Q. Never kept the corporate records?

A. No.

(Letter to Rand Truck Line by Otto W. Heider dated November 28, 1947, so produced, was thereupon marked Trustee's Exhibit 5.)



(Testimony of Otto W. Heider.)

Q. (By Mr. Bollenbeck): May I hand you Trustee's Exhibit 5 and ask if that is your signature?

A. I never kept them, I just sent these to Rand Truck Line.

Q. Just answer the question. Is that your signature?

A. Yes, that is my signature, but I never made up the by-laws or corporate records.

Q. How did you happen to have a copy of the by-laws?

A. I think they were left there by Mr. Rand for safekeeping, that is how I happened to have them. I never made them up at all.

Q. You mean this is a copy of the by-laws Mr. Rand left in [36] your office?

A. Just with some other old books and seal and other old books of the company, left them there temporarily.

Q. How did you happen to have the seal?

A. Well, I think he had it there at the time he put the seal on the mortgage.

Q. And left it there?

A. Left it there for awhile. I think they subsequently came and got it, but I never had charge of those things, just temporarily, just a temporary arrangement.

Q. How temporary, how long were they there?

A. He came back to town once a month when he was closing up his accounts with the different shippers and things and he would stop in and sometimes he would pick up one thing and sometimes another.

(Testimony of Otto W. Heider.)

Q. But he didn't pick up the by-laws?

A. I think that was an unsigned copy of the by-laws. I don't think—I am not sure. Mr. Taylor should have them. I never did write the by-laws for Rand Truck Line.

The Referee: Or the minutes of any of their meetings?

A. No, they usually had someone keep the minutes of their meetings. We might have typed them up in our office.

Q. (By Mr. Bollenbeck): Well, who dictated them?

A. I don't know who dictated them. I didn't dictate them.

Q. You never dictated any of the corporate minutes? [37]

A. I never kept the corporate records at all or prepared any of them.

Q. Just answer the question. Did you ever dictate any of the corporate minutes?

A. Well, I might have dictated on one or two occasions a small portion of the corporate minutes.

Q. Those occasions might be the occasions when these mortgages were given, mightn't they?

A. I don't know about that.

Q. You would be vitally interested in that part of the corporate minutes, wouldn't you, Mr. Heider?

A. Oh, I don't know necessarily why.

Q. Just answer the question. Would you or wouldn't you?

(Testimony of Otto W. Heider.)

A. Well, no. I had ample security. I had ample collateral all the time.

Q. Do you have the certificates of title of the motor vehicles there? A. Yes.

Q. May I see them, please. Do you have the ICC and PUC certificates?

A. Oh, no, I don't have them, never did have them.

Q. Now, there is one thing I can't understand about these mortgages, Mr. Heider, this Vern Markee mortgage, the original mortgage of \$5400 payable to the Rand Truck Line.

A. That was taken up by the second [38] mortgage.

Q. Well, now, let's get to that step by degrees.

A. All right.

Q. They executed—rather, Vern Markee gave the Rand Truck Line this mortgage dated October 31, 1945, on a Sterling truck, is that right?

A. Well, the description states there—

Q. One Sterling truck, model engine 44. Now, what happened to that mortgage then as far as you know? A. Why, it was filed, I suppose.

Q. Well, I mean did the Rand Truck Lines sell it to you?

A. I think that they sold it to me along with their other security.

Q. Well, when we were talking about this awhile back you stated that they had sold it to you, if I remember rightly. A. The Rand Truck Line?

Q. Yes. A. Had assigned it to me.

(Testimony of Otto W. Heider.)

Q. Well, they assigned it to you? A. Yes.

Q. And at that time you didn't know how much you had paid for it?

A. Oh, I told you I thought it was \$5100—I can't tell exactly. It was \$5100, between \$5100 and \$5200, and some cash.

Q. How much?

A. I'd say between \$5100 and \$5200. [39]

Q. And you stated you couldn't find the cancelled check?

A. I didn't find it yesterday when I was going through.

Q. Now, did you find the checks for the month of November, 1945? A. For what?

Q. For the month of November, 1945.

A. On what transaction?

Q. Well, your checks for November.

A. For what—oh, the checks to Rand—you have them in your hand.

Q. Well, there are some of those checks issued during the same month that this transaction occurred. Now, how did you happen to find these checks and not the check involved in this transaction?

A. I think probably with additional search I can probably find the checks.

Q. Do you keep your checks for one month together? A. No, I don't.

Q. What kind of a filing system do you have?

A. We usually keep them for two or three months together.

(Testimony of Otto W. Heider.)

Q. All right, you keep them for two or three months together and you found that particular batch of checks because you delivered the Rand checks. Why is it you couldn't find this check?

A. Why, I probably could find the checks. [40]

Q. Did you make an effort to find them?

A. Yes, I made an effort to find them and probably could find them.

The Referee: Well, without going into that detail, why, we will ask that if he can produce the check by which he purchased the Vern Markee mortgage——

A. Yes, I have a notation of date there and I can make another search, if the Court please.

Q. (By Mr. Bollenbeck): Also the Earl Walden mortgage, and if he can't find the checks, to produce the bank statements.

A. The bank statements wouldn't show the names of the payees.

The Referee: Well, still on this particular mortgage, you bought it from Rand Truck Line. Rand Truck Company didn't owe you any money on that?

A. You mean the first mortgage?

The Referee: No. I am talking about this Vern Markee mortgage.

A. Oh, yes—oh, this last mortgage.

The Referee: The Vern Markee mortgage.

A. They didn't owe me anything on that. I just paid them cash out on that.

The Referee: Yes, but then when you made this



(Testimony of Otto W. Heider.)

refinancing, why, you charged the Rand Truck Company for the balance due on that mortgage, \$2550.

A. Yes. [41]

The Referee: Well, did they owe you that?

A. Yes, they did.

The Referee: I thought Vern Markee would owe it to you.

A. Well, it is Rand—let me see the mortgage. Well, it was all in the same transaction. It was all taken up. This mortgage was given by Vern Markee, was given for the benefit—it was made out to the Rand Truck Line and made for the benefit of the Rand Truck Line. They got the proceeds out of the mortgage.

The Referee: And then you bought it from the Rand Truck Line?

A. Yes, I bought it from the Rand Truck Line.

The Referee: And did they endorse it without recourse?

A. No, they endorsed it with recourse.

The Referee: So you looked to them for the repayment of that mortgage?

A. Not now, because it was taken up.

The Referee: But at that time? A. Yes.

The Referee: And who was paying for that?

A. Who was making the payments?

The Referee: Yes.

A. The Rand Truck Line.

The Referee: Even though it was executed by Vern Markee to the Rand Truck? [42]

A. Yes, because he was one of the principal offi-

(Testimony of Otto W. Heider.)

cers of the Rand Truck Line and the money that was represented by this mortgage went for the benefit and use of the Rand Truck Line, that is right.

The Referee: The Rand Truck Line was operating this piece of equipment? A. Yes, it was.

The Referee: Not Vern Markee?

A. Well, Vern Markee was one of the operators of it for the Rand Truck Line, that is right, but the money represented by the mortgage went into the Rand Truck Line, to the benefit of the Rand Truck Line.

Q. (By Mr. Bollenbeck): Now, Mr. Heider, did you state this first mortgage was prepared in your office? A. Yes, I think it substantially was.

Q. I mean, it was typed in your office?

A. Yes, it was typed in my office and then checked by Rand.

Q. Now, do you know whether the minutes of the meeting authorizing this particular mortgage were typed in your office?

A. Let me see the minutes. I can't tell.

Q. The minutes of September 28, 1944, referring particularly to the second page thereof where it says "It is moved and seconded that the President and Secretary of the Rand Truck Line, Inc., together with the Vice President, borrow from Callie B. Heider on assignment from Mrs. R. R. Rand the sum of \$43,560." [43] Now, was that prepared in your office?

A. Well, that is the 28th day of September, '44. That is the first one. I can't say whether that was

(Testimony of Otto W. Heider.)

prepared in my office or whether Mr. Rand brought this to my office, but I am sure I have seen these minutes before.

Q. The minutes of the meeting authorizing the execution of this mortgage provided it was to be, the money was to be borrowed from Callie B. Heider. Now, who is Callie B. Heider?

A. That is my wife.

Q. That is your wife?                      A. Yes.

Q. You are unable to state at this time——

A. Well, I am not sure whether they prepared them and brought them to my office, but I have seen the minutes.

The Referee: You saw them at that time?

A. Yes, or I am sure shortly after they were prepared I saw them.

The Referee: Mr. Bollenbeck, the record would be more complete if you would introduce the first mortgage into evidence as an exhibit. It is not in.

A. And the minutes, too. I would like to see them introduced to complete the record.

(Mortgage by Rand Truck Lines, Inc., to Mrs. R. R. Rand, dated September 28, 1944, and accompanying papers, so produced, was thereupon marked [44] Trustee's Exhibit 6.)

The Referee: And Mr. Heider asked that the minutes be introduced.

(Document entitled on the first page "By-Laws of Article I" so produced, was thereupon marked Trustee's Exhibit 7.)

(Testimony of Otto W. Heider.)

The Referee: I notice the minutes are not bound in a book. Wasn't there a book that these minutes were bound in?

A. Not unless Mr. Taylor has a book.

Mr. Bollenbeck: As a matter of fact, your Honor, they weren't even stapled together until I stapled them. They were just loose.

The Referee: In whose possession were these minutes at the time of filing the bankruptcy?

Mr. Taylor: I had them in the office, your Honor.

Mr. Bollenbeck: In the office of Mr. Taylor.

Mr. Tonkon: He delivered them to me immediately prior to the filing of the petition and I turned them over to the Trustee's counsel.

Q. (By Mr. Bollenbeck): Now, Mr. Heider, weren't you vitally interested in having a proper resolution drawn by the corporation to authorize the execution of these mortgages?

A. I think that is a good idea. I have no objection to it.

Q. As a matter of fact, it is essential, isn't it?

A. Well, not necessarily, not necessarily, where you are [45] holding the stock of the corporation and showing the legal owner on the title, it isn't necessary.

Q. And you mean you didn't show any interest whatsoever in what the minutes of the corporation showed?

A. Oh, yes, I think that is very essential.

Q. And as a matter of fact you prepared them, didn't you?

(Testimony of Otto W. Heider.)

A. I may have checked them but I don't know whether they were prepared, whether Mr. Rand's attorney prepared them or whether I prepared them. I may have prepared them.

Q. Well, have you compared the typewriting of those minutes of that meeting and the original mortgage?

A. Well, I have five typewriters in my office and——

Q. Well, it is fortunate that these were prepared on the same one, then, isn't it?

A. Were they prepared on the same typewriter? That is the one.

Q. Now, this original first mortgage was prepared in your office?      A. Yes.

Q. And the minutes seem to be prepared on the same typewriter.

A. They very likely were, then.

Mr. Tonkon: Will you qualify the minutes?

Q. (By Mr. Bollenbeck): Minutes of the meeting of September 28, 1944.

A. They were likely written in my office. The typewriting looks familiar. [46]

Q. And it looks identical, does it not?

A. Yes, quite familiar. They are not identical because I think they are probably on different typewriters, but on Royal, different typewriters.

Q. Now, Mr. Heider, these checks indicate that you paid this money to Rand at the rate of \$500 a month—\$500 a week, rather.

A. Yes, I think that is better.



(Testimony of Otto W. Heider.)

Q. Why was that done?

A. I didn't have the money.

Q. You were unable to pay the full amount right at that time?      A. That is right.

Q. However, your mortgage as prepared, you were collecting interest on the full amount for the full period of time?

A. Yes, but I settled with Rand on the interest too, I paid Rand interest.

Q. You paid Rand interest?

A. Yes, I did.

Q. What rate did you pay Rand that?

A. Oh, I think I paid him 8 per cent.

Q. Did you have a written agreement with him on that?

A. I think I had a collateral agreement with him, because he didn't pay it—didn't turn the stock of the company over until I settled with him in full. I have the stock here now. You haven't asked for [47] it.

Q. Mr. Heider, I thought I had the stock.

A. Do you have the stock? Maybe we have two sets of stock, then. That is okeh. I guess we got two sets of stock.

The Referee: Do you have checks to show the interest that you paid to Rand?

A. I think they are in there, I think most of them are in there. That was a private matter between Mr. Rand and myself because I didn't have the money to pay him at the time.

Q. (By Mr. Bollenbeck): Now, these payments

(Testimony of Otto W. Heider.)

on this first mortgage that you have shown here as Trustee's Exhibit 1, how were those payments received?      A. By check.

Q. All of them by check?

A. Oh, I think so.

Q. And did you at any time get cash?

A. I think they came through the mail from Rand Truck Line.

Q. Did you ever get cash any time?

A. Oh, probably did, but most of the time it was by check.

Q. Who paid the payments to you?

A. Oh, some representative of the Rand Truck Line.

Q. Who would they be?

A. Oh, Mr. Taylor, Mr——

Q. We are talking about the first mortgage now. Mr. Taylor wasn't with the company now at the time of the first mortgage.

A. Well, the first mortgage—well, I think maybe Mr. Markee, [48] the principal officer.

Q. Which Mr. Markee?

A. Well, it might have been in some cases Loren Markee, but the most of the time I think it was Vern Markee.

Q. And did they pay in cash?

A. Did they pay in cash?

Q. Yes.

A. Sometimes they paid in cash but most of the times they paid in check.

(Testimony of Otto W. Heider.)

Q. Most of the time they paid by cash?

A. It might be so. And sometimes it was paid by check and I would give receipts too.

Q. And on your receipts you would specify it was by check or cash? A. Oh, not always.

Q. Not always? A. Not always.

Q. Mr. Heider, I am going to refer——

(Sheaf of receipts, so produced, was thereupon marked Trustee's Exhibit 8.)

Q. (By Mr. Bollenbeck): I am going to refer you to Trustee's Exhibit 1 and the payment of September 15, 1945, in the amount of \$1000 and hand you Trustee's Exhibit 8, dated September 14, 1945, in the amount of \$1,050 and ask you why the discrepancy?

A. Well, there is probably some other item they owed me on [49] at the same time. That is probably—they are credited with \$1000, but there is probably some other item.

Q. What other item would it be?

A. That is four years ago. I couldn't tell you at the moment, but probably there is some other item.

Q. Do your records show what other item it was?

A. I don't have a record, but that might have been by check and by cash both. This may have been by check and by cash both, so I couldn't tell you.

Mr. Bollenbeck: As far as we are marking things by lot I would also like to include the rest of these exhibits with the one of September 14th so I can refer to them.

The Referee: All the receipts produced by Mr.

(Testimony of Otto W. Heider.)

Heider on the first mortgage may be included in Trustee's Exhibit 8.

Q. (By Mr. Bollenbeck): Now, on October 1st, 1945, you have got \$1000 there, and I hand you a receipt for \$1050.

A. That was on—I think there was some \$50, that it was on some services that I rendered.

Q. Now, what services? A. To whom?

Q. To whom?

A. Some services I rendered along about that same time or prior.

Q. To whom?

A. Well, it was to the Markees for operating the Rand Truck Line. [50]

Q. What kind of services would those be, Mr. Heider? A. Oh, legal services.

A. Oh, I thought you said you were never their lawyer?

A. I said the Rand Truck Line, for Bob Rand, while Bob Rand had it I was never attorney for Bob Rand.

Q. Oh, you were attorney for Rand Truck Line after Markee's took over?

A. Oh, I did some services after Markee took over, not for Rand.

Q. And you did prepare these mortgages, both of them?

A. Oh, they were prepared in my office.

Q. And you did prepare the corporation minutes? A. Oh, I don't know about that.

Q. What would they be paying you \$50 for?

(Testimony of Otto W. Heider.)

A. Legal services.

Q. What kind of services?

A. Various kinds.

Q. Let's be specific.

A. Some paper, document—they might come in with something to the Public Utilities Commissioner or something. It might be various legal services.

Q. Did you act for them before the Public Utilities Commissioner?

A. No, I never appeared before the Public Utilities Commissioner.

The Referee: Did you render some statement to them that you might have copies of? [51]

A. No, I didn't render statements to them that I recall, but I might find statements of it, though. That was four years ago and I might possibly go back and find the statements.

Q. (By Mr. Bollenbeck): Now, I am going to refer you, Mr. Heider, to a receipt issued to Vern Markee on January 11, 1946, in the amount of \$450.

A. I think that was on that mortgage over there.

Q. Do you know whether that was paid in cash and check?

A. Well, it might have been paid both ways, cash and check.

Q. You did get cash quite a bit of the time?

A. Oh, yes, and I paid out cash too.

Q. In other words, your statement when you first started talking about cash and checks is not quite correct?



(Testimony of Otto W. Heider.)

A. It is cash and checks both. I think sometimes they give me a check on that and part cash.

Q. And that happened a good many times, did it?

A. Well, a number of times.

Q. That you received cash and check?

A. Yes.

Q. Do you know any reason why it would take place that way?

A. Now, why they wanted to pay their debts that way I don't know. They probably had the money available and wanted to pay it that way is all I can tell you.

Q. Now, you, of course, filed your income tax return for '44, '45, '46, and '47? [52]

A. Yes.

Q. And in making those income tax returns did you make the proper entries for interest collected and interest paid? A. Oh, yes.

Q. And will you produce those income tax returns here? A. I haven't got them.

Q. You haven't got them?

A. With me, no.

Q. Do you have them available in Sheridan?

A. I don't know whether I have them available or not. I think that I have copies available.

Q. Will you produce the copies?

A. Well, I don't have them here.

Q. Will you produce them at a time to be fixed by the Court? A. I could produce them.

Mr. Bollenbeck: I would like to ask the Court for an order.

(Testimony of Otto W. Heider.)

Q. Will those income tax returns show these particular items? A. No, they won't.

Q. Do you have any documents or records showing these particular items?

A. Well, on that \$50 item I think I can find maybe a statement or something for that.

Q. And how about the interest earned and interest paid on these mortgages and paid to Rand?

A. You have cancelled checks. [53]

The Referee: How do you keep books to determine what interest is earned?

A. I keep a separate set of books for that.

The Referee: You have a separate set of books?

A. Yes, I have.

The Referee: And you make those entries of these payments? A. Yes, that is right.

Q. (By Mr. Bollenbeck): Mr. Heider, didn't the Court order you to produce the original books today? A. I produced the books.

Q. I am talking about the books.

A. You have it over there.

Q. You have now told the judge you have a set of books.

A. He was asking about income tax returns.

Q. You have to enter these items.

A. I don't have to enter who pays them, where they come from, that way. I just enter that much.

Q. You do have a ledger sheet on this transaction?

A. No. You have the sheet on the transaction right there. I give it to you awhile ago.

(Testimony of Otto W. Heider.)

Q. From what books and records do you determine your income tax?

A. Well, I have a separate set of books showing my income and disbursements.

Q. Has that got a sheet for this transaction? [54]

A. Not a particular sheet for that. I enter it up just as the thing accrues.

Q. Do these records show to whom you paid the money and from whom you received it?

A. Not to whom, it doesn't show that. That isn't required.

Q. All it shows is receipts and disbursements?

A. What?

Q. All it shows is receipts and disbursements?

A. Receipts and disbursements.

Q. No names? A. No names.

Q. No transactions identified?

A. No transactions like this would be set up like that.

Q. Have your books ever been checked by the Internal Revenue Department?

A. Oh, they are checked every year.

Q. And they approve that kind of books and records?

A. Well, they set them up for me and they are checked every year, have been for years.

Mr. Bollenbeck: I would like to ask the Court for an order requiring Mr. Heider to produce his books and records. His testimony is very unsatisfactory, and I trust that the books and records will be

(Testimony of Otto W. Heider.)

more satisfactory. I'd also like a copy of his tax returns.

A. You have all the books and records that I have got. [55]

The Referee: He stated those books will not show anything on these transactions.

A. Show absolutely nothing.

The Referee: I will not make such an order at this time. Now, has he produced the receipts on the second mortgage showing what the balance is? What is that item?

A. On the first mortgage?

Q. (By Mr. Bollenbeck): I haven't got to the second mortgage yet.

A. Let's see, I thought I had given it to you. No, here it is on the second mortgage. Here is the assignment too. You didn't ask for that, Mr. Bollenbeck.

Q. You have, I take it, in your claim on the second mortgage demanded the entire amount at this time?

A. You called me up, Mr. Bollenbeck, and said you wanted to pay it off, and I told you the amount.

Q. What did you tell me at that time?

A. I told you I would give you a discount.

Q. How big a discount?

A. I don't remember now whether it was 3 or 4 per cent.

Q. Well, in your claim that you filed in here you have accelerated the mortgage and claimed the entire amount.

A. The mortgage accelerates itself.

(Testimony of Otto W. Heider.)

Q. In other words, it is your position that the mortgage has accelerated? [56]

A. There is a breach in it.

Q. And the entire amount is due and owing?

A. That is according to the terms of the mortgage.

Q. And that is according to your understanding of it? A. That is the way it reads.

The Referee: His proof of claim states that.

Q. (By Mr. Bollenbeck): I notice, Mr. Heider, there are some payments that you say "Received from R. J. Werner." Who is R. J. Werner?

A. Oh, that is a truck that Mr. Taylor sold that was taken out of the mortgage and it was leased to Mr. Werner and he made some payments on it.

Q. He paid them direct to you, did he?

A. Yes.

Q. And it was applied on the mortgage?

A. They were applied on the mortgage. It was a Sterling truck, I believe, a single axle.

The Referee: Do you want to introduce that statement into evidence?

A. If the Court please, are those certificates of title introduced in evidence?

The Referee: No, they are not.

(Tabulation with beginning date 11-2-48 and closing date of 5-10-49 and accompanying payers, so produced, was thereupon marked Trustee's Exhibit 9.) [57]

Q. (By Mr. Bollenbeck): Now, Mr. Heider, who



(Testimony of Otto W. Heider.)

at the Internal Revenue Department set up your books?

A. Oh, I can't tell you. About ten years ago they showed me the system to use, and that is the system I have been using ever since.

Q. Do you have any objection to this court selling this equipment free from the lien of your mortgage with the amount and validity of your mortgage to be determined in the future by this Court?

A. I asked you on the phone, Mr. Bollenbeck, if you had a buyer of it and instead of giving me a civil answer you gave me anything but one, so I don't know what you have in mind.

Q. Just answer my questions.

A. No, I wouldn't want to handicap the Company if they had a buyer, a cash buyer, and then the amount could be determined. I wouldn't have any objection to it if they had an immediate cash buyer and wanted to make a sale if it would expedite matters or be of any advantage to the corporation. I wouldn't have any objection.

Q. You would have no objection to do that then? Well, that being the case would you be willing to surrender the title policies to the Trustee in Bankruptcy?

A. Whatever Referee Snedecor says in that regard I will be very glad to comply with his request.

The Referee: Mr. Heider, it is the practice of this Court [58] to sell property free from liens, the order providing that the proceeds shall be impressed with all valid liens as determined by the Court.

A. That is satisfactory.

(Testimony of Otto W. Heider.)

The Referee: And if an order is so made it would provide that the proceeds shall be held in lieu of the property itself.

A. That is right.

The Referee: To be impressed with any valid liens and the money paid on those liens by order of the Court.

A. That is okeh, satisfactory with me.

Mr. Tonkon: Of course, subject to the further determination of the Court as to the validity of the liens.

The Referee: Validity and amount of the liens, amount owing.

Mr. Bollenbeck: In this particular case, your Honor, because of the unusual circumstances I would like to keep the mortgage alive in favor of the Trustee in Bankruptcy. I don't just exactly know how it is going to be done yet.

Mr. Tonkon: How do you mean "yet"?

Mr. Bollenbeck: Without being cancelled.

The Referee: Well, selling the equipment doesn't satisfy the mortgage. The mortgage is still there and the proceeds are held in lieu of the mortgaged property. That is a matter that you might determine by the order. Mr. Heider has the assignment of this second mortgage. Perhaps that should go [59] in evidence.

Mr. Bollenbeck: Yes.

(Assignment of mortgage and note dated August 7, 1946, so produced, was thereupon marked Trustee's Exhibit 10.)

(Testimony of Otto W. Heider.)

The Referee: It will be understood that if a satisfactory sale is made that Mr. Heider will then present the certificates of title endorsed so that the assets may be transferred without delay to the purchaser. A. That is very satisfactory.

Mr. Tonkon: I think the order should also include some papers or documents in connection with the Rand Truck Line.

A. If the Court please, if it will be of any assistance to Mr. Bollenbeck about maintaining the mortgage, I can make an assignment of the mortgage to the Trustee if it will be of any assistance.

The Referee: Well, that will be a matter of future determination. Now, Mr. Heider, do you have in your possession any original documents that belong to the Rand Truck Line, the Bankrupt?

A. Well, these certificates of stock here.

The Referee: You have certificates of stock? I think you gentlemen might, without encumbering the record, check those between yourselves afterwards while you are still here. Do you have any original corporate minutes? [60]

A. No, I don't have any at all. Those are all.

The Referee: The reason I ask you that question is that I notice that the corporate minutes authorizing that first mortgage seem to be the carbon copies. A. That is the original.

The Referee: Well, I saw one carbon copy.

Mr. Bollenbeck: They have copies in there too, your Honor.

The Referee: I see. Well, then, the order of the

(Testimony of Otto W. Heider.)

Court will be that the property may be sold free from lien, including in the order the safeguards which have already been mentioned, and the Court will not at this time pass on the question of the amount owing or any questions that might be raised as to the validity of the mortgage. Those are questions that Mr. Heider will have ample opportunity to meet at the time, but it is hoped, Mr. Heider, that we can sell this truck line, the equipment, as a going concern in order to get some value out of the permits, and it would be to the advantage of all. We expect to sell it for considerably more than the amount you claim and the matter of determining the validity and amount of your lien will be taken up and if the Trustees have any objections to it you will be served with the objections and then there will be a further hearing on it. I am not determining that matter at all. Is that all now?

Mr. Bollenbeck: I have Vern Markee here.

The Referee: Well, it is noon now. He was subpoenaed? [61]

Mr. Bollenbeck: Yes, your Honor. I take it the gentlemen will still be under subpoena for the rest of the day?

The Referee: Yes. Was Mrs. Markee subpoenaed?

Mr. Bollenbeck: No, she wasn't.

The Referee: We will take up again at 2:00 o'clock.

(Witness excused.)

(Noon recess.) [62]

Afternoon Session—2:30 P.M.

The Referee: Now, Mr. Vern Markee, will you come up, please.

VERN MARKEE

was thereupon produced as a witness in behalf of the Trustee and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Bollenbeck:

Q. You are Mr. Vern Markee?

A. Yes.

Q. And Florence Markee is your wife?

A. That is right.

Q. When did you first become connected with the Rand Truck Line?

A. In about September of 1943.

Q. And how did you become connected with the Rand Truck Line?

A. My operation was consolidated and I went in as a partner with Bob Rand.

Q. Well, you bought some stock in the Rand Truck Line, didn't you?      A. That is right.

Q. You bought 250 shares of stock and your wife Florence Markee took 250 shares of stock?

A. Yes.

Q. And what did you pay for that stock? [63]

A. There wasn't any cash involved. It was a transfer of equipment.



(Testimony of Vern Markee.)

(Carbon copy of document dated December 27, 1943, so produced, was thereupon marked Trustee's Exhibit 11.)

Q. (By Mr. Bollenbeck): I hand you Trustee's Exhibit 11 for identification which purports to be a bill of sale signed by yourself and Florence Markee transferring certain equipment to the Rand Truck Line. Is that the equipment that you turned over to Rand in return for these 500 shares of stock? A. Yes, it is.

Q. And this bill of sale was delivered at that time? A. Yes, sir.

Q. Now, this specifically covers "all permits of the Public Utilities Commission of the State of Oregon and the United States Interstate Commerce Commission for the operation of the above-described trucks as a common carrier." Now, what permits did you have at that time, Mr. Markee?

A. I had a Public Utility Commission permit, anywhere for hire permit within, from and to sixty road miles radius of Sheridan.

Q. Is that the only permit you had?

A. No, that was the Public Utilities Commissioner permit.

Q. What other permits did you have?

A. I had an Interstate Commerce permit which was authority to haul interstate commerce freight between Portland and Sheridan. [64]

Q. Were those the only permits you had?

A. That is right.

(Testimony of Vern Markee.)

Q. And those were the permits that were transferred to the Rand Truck Line?

A. No. One of those permits was cancelled and the other was never transferred.

Q. Which one was cancelled?

A. The Interstate Commerce permit.

Q. The Public Utilities Commissioner permit was never transferred? A. That is right.

Q. Now, you are operating down there in Sheridan now, aren't you? A. That is right.

Q. And what kind of an operation do you have?

A. We have an anywhere for hire operation within, from and to a sixty road mile radius of Sheridan.

Q. Are you using the permit that is covered under this bill of sale? A. Yes.

Q. And you are operating in competition with the Rand Truck Line? A. Yes.

Q. On a permit that you give a bill of sale to?

A. The permit was never transferred.

Q. Well, now, you give a bill of sale to it, didn't you? A. That is right. [65]

Q. Why wasn't it transferred?

A. Because it didn't have the authority of the Public Utility Commission.

Q. Did you ever apply for that authority to transfer it? A. No, sir.

Q. And you were an officer of the corporation at that time? A. Yes.

Q. There is a suit pending now by the Rand Truck Line against you, is there not, involving this

(Testimony of Vern Markee.)

same permit?           A. Yes.

Q. What excuse do you have for continuing operation under a permit that belongs to the Rand Truck Line?

A. The permit doesn't belong to Rand Truck Line.

Q. Well, it doesn't belong to it merely because you yourself failed to have it transferred, doesn't it?

A. No. The permit—when I went in with Rand, why, the permit was not transferred because at any time if I wanted to I could reinstate the permit. The permit was froze for the duration of the war.

Q. Wait a minute—that you could reinstate the permit?           A. Yes.

Q. As your own property?

A. I froze the permit. The permit has always been in mine and my wife's name.

Q. But you transferred it to the Rand Truck Line by this bill [66] of sale.

A. No. It was never transferred.

The Referee: You agreed to transfer it, you mean?

A. Yes.

The Referee: Did you get the 500 shares of stock?

A. I got 250 and my wife got 250.

The Referee: That was full consideration?

A. Yes.

Q. (By Mr. Bollenbeck): Since you agreed to transfer this permit to the Rand Truck Line are

(Testimony of Vern Markee.)

you willing to abide by your agreement and transfer it.

A. Well, the agreement with Bob Rand was subject to the fact that if I wanted to resume operation that it could be, that the permit was still mine; in other words, there was no consideration for the permit in the first place. The Public Utilities Commission will not let you transfer the permit without a hearing and it was not the intent.

Q. Is there anything in writing that says that?

A. Yes.

Q. What?

A. An agreement between Bob Rand and myself.

Q. Let's see it.

A. I don't have it with me.

Q. Can you produce it?           A. Yes. [67]

Mr. Bollenbeck: I would like to ask the Court for an order requiring him to produce it.

The Referee: You will be asked to produce that at a future hearing and we will fix a time for it.

Q. (By Mr. Bollenbeck): Now, subsequent to that time, Mr. Markee, did you purchase any additional stock in the Rand Truck Line?

A. Yes.

Q. Well, when did you buy some additional stock and from whom did you purchase it?

A. From Bob Rand in 1945, I believe.

Q. And how many shares of stock did you buy then?           A. I don't remember.

Q. Well, I will refresh your memory. Did you buy 2,000 shares and Loren Markee buy 2,000 shares?           A. I believe that is right.

(Testimony of Vern Markee.)

Q. 4,000 shares. And how did you pay for that stock? A. We didn't.

Q. We didn't? A. No.

Q. Well, just what was the transaction?

A. We signed a mortgage with Otto Heider.

Q. This mortgage was \$43,560, I think. How much did you agree to pay for this stock?

A. That I don't know.

Q. Well, you certainly must know how much you were going to [68] pay.

A. Well, it was for the balance of the stock we was buying at par value from Bob Rand, outstanding stock that my wife and I did not have.

Q. That was 4,000 shares?

A. That is right.

Q. Now, who acted as your lawyer in that transaction? A. I don't believe we had a lawyer.

Q. Was Mr. Heider involved in the transaction?

A. Mr. Heider was there, yes.

Q. Was he there before the deal was made?

A. No.

Q. Well, now, how did you—what was the first document you signed between yourself and Rand involving the sale of this stock?

A. I believe it was an agreement. I am not sure. It's been a long time.

Q. An agreement to buy at par? A. Yes.

Q. Would that be \$40,000, 4,000 shares at \$10 a share? A. Yes, I believe that is right.

Q. Well, now, do you know, Mr. Markee, or don't you?



(Testimony of Vern Markee.)

A. I am not sure. It's been a long time ago. You have got all the stuff there.

Q. No, I haven't got that. You heard Mr. Heider's testimony [69] this morning that he paid the Rands about \$36,000. A. Yes.

Q. Is that what the purchase price of the stock was?

A. The purchase price of the stock was what remained of the issued stock that we did not have.

Q. Well, how much where you going to pay for that? A. Par value, whatever it was.

Q. Well, par value I think would be \$40,000, but you didn't pay \$40,000 for it.

A. What did we pay for it?

Q. Did you pay any money to the Rands other than the money that Mr. Heider paid them?

A. No, we didn't.

Q. You didn't. Did Loren Markee put up any money at the time? A. Yes.

Q. In addition to the money that Mr. Heider paid? A. Yes. That wasn't paid to Rand.

Q. Where did that money go?

A. I don't know.

Q. What do you mean you don't know?

A. It is like I said, it's been a long time ago. It's all down there in the record.

Q. The money that Loren Markee paid, did it go into the corporation?

A. The money he put in went in for stock. I am sure it didn't [70] go for the corporation.

Q. To whom did it go, to you? A. No.

(Testimony of Vern Markee.)

Q. Did it go to Mr. Heider?

A. No. I believe it went to Rand. I am not sure.

The Referee: Do you remember how much it was? A. \$5,000.

The Referee: \$5,000. That was in cash?

A. Yes.

Q. (By Mr. Bollenbeck): In other words, now the transaction is that Loren Markee paid \$5,000 to the Rands and Mr. Heider paid approximately \$36,500 to the Rands and for that you and Loren equally got 4,000 shares of capital stock in the Rand Truck Line, is that right?

A. Got 4,000 or 2,000?

Q. You got 2,000 each?

A. That is right.

Q. And I understand you did not put up any cash. A. No. I put up my equipment.

Q. Well, I mean that equipment was for that 500 shares that you had originally purchased.

A. That is right.

Q. But for the additional 2,000 shares that you purchased you did not put up any money?

A. No. [71]

Q. Now, when did Mr. Macy come into the corporation? A. About 1946.

Q. And how did he come in, I mean did you and Loren sell him some stock? A. Yes.

Q. And how many shares did you sell him?

A. I don't recall. We split it three ways again, split it three ways instead of two ways.

Q. And what consideration did he pay?

(Testimony of Vern Markee.)

A. \$5,000.

Q. To whom did he pay it.

A. My brother and I.

Q. Now, how did Mr. Taylor come into the picture? Did he buy stock or was that stock given to him?

A. That stock was given to him.

Q. The stock was given to him. Now, getting back to this first mortgage that the Rand Truck Line gave——

A. May I clear up one item, your honor? That \$5,000 that Mr. Macy put in was turned over to Mr. Heider on the mortgage.

Q. (By Mr. Bollenbeck): Who made the payments to Otto Heider on this first mortgage?

A. Oh, I made some of them myself, some of them were mailed in, Gordon Mize in Portland made some of them.

Q. Were they made in cash or by check?

A. Both. [72]

Q. Where did the cash come from?

A. Came out of the company.

Q. And did the checks come from the company too?

A. Yes.

Q. When those payments were made to Mr. Heider how were they entered in the books, do you know?

A. No, I don't.

Q. Isn't it a fact that they were first entered as an account receivable from officers, isn't that the way you first entered them in the books?

A. I never entered them myself. I didn't take care of the bookkeeping.

(Testimony of Vern Markee.)

Q. Well, you supervised the bookkeeping, did you not?      A. No. I was there.

The Referee: Who was your bookkeeper?

A. Allan Brigg, Portland, the office manager. He took care of the books.

Q. (By Mr. Bollenbeck): Now, Mr. Markee, I am going to hand you here Trustee's Exhibit 1 for identification and I am going to also hand you here an analysis of your other investment officers account. Can you tell me why Mr. Heider should show that \$1,000 payment was received and why on the same date a charge should be made against the officers, say on December 28, 1944? Otto Heider shows a credit on the mortgage of \$1,000 and you show that you have charged the officers account \$520.57. [73] Can you tell me why that discrepancy?

A. I have no knowledge of this at all. I can't say.

Q. Well, let's take the statement of March 30th, 1945. Your account officers shows a charge against you and payment to Otto Heider of \$463.26. Otto Heider shows a credit on the mortgage of April 2nd of '45 of \$1,000. Now, I have here your original accounts receivable for 1945—strike that. Well, I am going to have to change my question here because of the books. You show, Mr. Heider shows on April 2nd, 1945 a credit of \$1,000. Now, on March 9th, 1945 you paid R. R. Rand, or rather there was charged to your officers account on account of a payment to R. R. Rand, of \$472.93, and on March

(Testimony of Vern Markee.)

30th Otto Heider \$463.26. I see an entry here in your accounts receivable which is \$496.19, being the total of those two checks or those two charges against your account to Rand and Heider. Now, where did the difference between this \$463.26, which was charged to your account and paid to Heider, and the \$1,000 which he shows as a credit come from?

A. It came from out of the company as far as I know.

Q. You mean there was income from the company that didn't go through the books?

A. If it doesn't show it on there. I didn't keep those books. I am not sure what there is in there. You seem to have some trouble figuring them out yourself. I don't see how you expect me—I am not an accountant. [74]

Q. Was there income from the use of the company equipment that did not go through the books of the Rand Truck Line?

A. Yes.

Q. And where was that money paid?

A. It was paid to Otto Heider.

Q. Now, was that a consistent practice of the Rand Truck Line at that time?

A. That didn't happen very often.

Q. How often did it happen?

A. That I can't say.

Q. What was the purpose of earning money with the use of the company equipment and not putting it through the company books?

A. That I can't say.



(Testimony of Vern Markee.)

Q. You were doing it, weren't you?

A. I was there, yes.

Q. You were in fact the controlling officer of the company, weren't you?      A. Yes.

Q. Well, why did you do it?

A. Well, we didn't have any adequate book-keeping system and I wasn't a bookkeeper myself, and it was——

Q. You knew it was going on?      A. Yes.

Q. Was it to defeat income tax purposes?

A. I don't know. [75]

Q. Was it to pay for your stock without building up a charge against you on the company books?

A. That I don't know.

Q. You were doing it. Why were you doing it?

A. I have often wondered myself. I don't know.

Q. Would you say as a practical matter that the difference between the credit that Mr. Heider shows on this mortgage and the amounts that you are charged with in the company books that that difference is the amount of company business that didn't go through the company books?

A. That I don't know.

Q. Did you secure any funds from any other source to pay Heider?      A. No.

The Referee: All payments to Mr. Heider were earnings from the company, is that right?

A. Yes.

Mr. Tonkon: I think there is one exception, your Honor. The \$5,000 that he paid went to Mr. Heider.

A. Both \$5,000 went to Heider.

(Testimony of Vern Markee.)

The Referee: One of them went to Mrs. Rand on the original purchase, is that right?

A. I believe that is right.

Q. (By Mr. Bollenbeck): Now, isn't it a fact, Mr. Markee, that the original mortgage was never set up on the books of the [76] company.

A. Yes, that is right.

Q. And that the second mortgage, the Public Utilities Commission insisted that the second mortgage be set up on the company books?

A. Yes.

Q. And at that time you, in order to set it up on the company books, you took this balance of \$13,168 that was still due on the first mortgage and you charged it to yourself on the company books?

A. I didn't do it, but it was done.

Q. That is what was done?

A. That is right, I recall that.

Q. And it was done with your consent and knowledge at the time it was done? A. Yes.

Q. Now, what is the value of that everywhere for hire permit that you are operating down there now? A. It has no value.

Q. Well, perhaps theoretically it doesn't, but actually what is it worth?

A. Well, it can't be mortgaged. It is just whatever anybody is willing to pay for it.

Q. You are giving the Rand Truck Line pretty severe competition down there aren't you?

A. I wouldn't say that. [77]

Q. What was your net earnings last year?

(Testimony of Vern Markee.)

A. \$8,000 about.

Q. That is off the truck line operation?

A. Yes.

Q. And before you went into competition with the Rand Truck Line was the Rand Truck Line handling that business that you are doing now?

A. Part of it.

Q. What big a percentage?

A. I'd say it's been 75 per cent of it.

Q. It could be 90 per cent, couldn't it, rather than 75?      A. I don't think so.

Q. Did Mr. Heider draw up the original mortgage for you?      A. I am not sure.

Q. Well, who did?

A. I say I am not sure.

Q. Who was your attorney at that time?

A. I don't believe I had an attorney unless it was Mr. Heider. He was handling——

Q. Now, as far as Mr. Heider paying the money to Rand, was that arranged prior to the time that this sale went through?

A. Well, that I don't know.

Q. You mean the Rands just agreed to give you their stock in this company in return for this note without knowing whether they could cash it in or not? [78]

A. Oh, we made an agreement with Mr. Rand to finance it. What arrangements he made—we made an agreement with Mr. Heider to finance it. What arrangements he made with the Rands I do not know.

(Testimony of Vern Markee.)

Q. But you talked to Mr. Heider and arranged for the financing of it, is that right?

A. That is right.

Q. And that was all, that arrangement was made before your deal with the Rands was finally completed?

A. Yes, it had been.

Q. So the Rands knew they were going to get their money from Mr. Heider before they sold the stock to you?

A. Yes.

Q. Now, let's go to the second mortgage. What was the occasion for having that executed?

A. To refinance.

Q. Why was that property of yours down there, that terminal building of yours, included in the mortgage?

A. Additional security.

Q. Had you owed Mr. Heider any money on that prior to that time?

A. No, sir.

Q. Had you owed him any money for any other reason prior to that time?

A. I had had dealings with him, yes.

Q. I mean unpaid, money that was unpaid at that time? [79]

A. No.

Q. When did you buy your house from Mr. Heider?

A. I believe it was in May in 1946 or '7, 1946.

Q. '46. That was prior to the time this mortgage was given. This second mortgage—in order that you won't be confused, it was executed the 7th day of August, 1946.

A. Well, I could be mistaken there.

Q. So you did buy the house from him a few

(Testimony of Vern Markee.)

months prior to the execution of this second mortgage?      A. That is right.

Q. And how much did you pay for this house?

A. \$9,400.

Q. You have a better memory than Mr. Heider. He couldn't remember this morning.

The Referee: He has been paying for it.

Mr. Heider: If the Court please, I don't want to be the least bit captious here, but this private transaction between us and Mr. Markee hasn't the slightest bearing on this, foreign entirely to it all.

The Referee: I don't either, but the examination permitted under the Bankruptcy Act is very broad.

Mr. Heider: I am amused by the house transaction because I can't see the slightest relevancy.

Q. (By Mr. Bollenbeck): How did you purchase this house from Mr. Heider, on a conditional sales contract or a mortgage? [80]

A. Mortgage.

Q. You took title to the property and give a mortgage back?

A. Yes, sir—I am not sure. Wait a minute. I would have to check.

Q. Well, what is the present balance on it?

A. Around \$5,000.

Mr. Heider: I still have the title.

The Referee: I figured Mr. Heider wouldn't take back a mortgage for the full purchase price.

Q. (By Mr. Bollenbeck): Now, let's talk about your terminal, Mr. Markee. When and where did you buy this land?



(Testimony of Vern Markee.)

A. I bought it from Mrs. Haas at Sheridan.

Q. That land was unimproved at that time, was it not?      A. That is right.

Q. How much did you pay for it?      A. \$900.

Q. And when did you pay for it, when did you buy it?      A. About 1944, somewhere in there.

Q. Now, did you build a terminal on that land?

A. Yes.

Q. You built a building?      A. Yes.

Q. And where did you get the money to build the building?      A. I borrowed it from Mrs. Haas.

Q. As a matter of fact, you took it out of the company, didn't [81] you?      A. No, I did not.

Q. Did you take any part of it out of the Rand Truck Line funds?      A. I did not.

Q. Do you know that you are charged on the books of the corporation with a substantial number of hundreds of dollars for building the Sheridan terminal?      A. Yes, I saw that.

Q. Well, what is your explanation of that charge?

A. That is not a just charge. It shouldn't be on there. Some of the stuff was purchased through Rand Truck Line but the money went back into Rand Truck Line.

Q. I don't understand your statement. You were in charge of the corporation at that time, were you not?      A. At that time.

Q. And you had the opportunity and the right to dictate what should go into the books of the company, did you not?      A. Yes.

(Testimony of Vern Markee.)

Q. And these charges were made against you?

A. It is \$1,300. I know what it is and it shouldn't be on there.

Q. Well, why didn't you have it corrected, then?

A. Too busy moving the freight, I guess.

Q. Now, do you know what it represents, the \$1,300? A. No, I do not. [82]

Q. If the company can produce vouchers to show that \$1,300 went into the Sheridan terminal would you still dispute the amount?

A. No. I told you it is \$1,300, and I know what it was.

Q. What was it then?

A. Material purchased for the terminal.

Q. What terminal?

A. For the terminal at Sheridan.

Q. Was that the terminal that was being built on your land? A. Yes.

Q. In other words, the company did purchase \$1,300 worth of stuff that went into that terminal?

A. The money went through the company books, the accounts went through the company books. The money was put back into the company.

Q. How was it put back into the company?

A. That was some of the money evidently that went to Otto Heider.

Q. You mean that you bought some materials to build your Sheridan terminal and they in order to repay the corporation for that \$1,300, you paid some money to Otto Heider, is that—

A. No, sir. The money went back into the com-

(Testimony of Vern Markee.)

pany and there could have been some of the money that went in to Otto Heider. I don't know.

Q. Could it have been some of the money that went to Otto Heider [83] in cash?

A. It could have been.

Q. That was the terminal where you afterwards leased to the Rand Truck Line, was it not?

A. That is right.

Q. And that was the terminal where you endeavored to secure a cancellation of about \$10,000 liability of yours in order to give them a lease, isn't that right?

A. They did sign a release on that, yes.

Q. What was the reason for demanding a \$10,000 bonus for signing a lease on your terminal?

A. I didn't consider that \$10,000 bonus. Mr. Taylor stated time and again that it was not a good entry on the book and should never have been on there, and when we—when we sold our stock to Rand Truck Line our lawyers suggested that we have Mr. Taylor give a release, which he did.

Q. You were on the books as owing Rand Truck Line over \$10,000, weren't you, for the money that went to Otto Heider?

A. That was—should have been the stockholders and not myself personally. Why they set it up in my name, I don't know.

Q. In other words, it should have been you and Loren Markee and Harold Macy?

A. The stockholders, yes.

Q. And the amount in fact is over \$27,000 when

(Testimony of Vern Markee.)

you add all three of them up, isn't it, the money on the corporation books [84] that went to Mr. Heider?

A. I am not sure it is that much. I believe that is what it was in the officers account.

Q. Well, you regard this cancellation of this \$10,000 item against yourself merely as a bookkeeping entry, is that what you understood it to be, just to clear the books? A. Mr. Taylor said——

Q. I am not asking what Mr. Taylor said. What did you think? Did you regard it merely as a bookkeeping entry?

A. No. The lawyer suggested that we get a signed release when we got out of Rand Truck Line.

Q. Who was your lawyer?

A. John Hickson.

Q. And you attempted to extract a \$10,000 bonus from the Rand Truck Line by the company cancelling your indebtedness to it in order to give them a lease in Sheridan?

A. I didn't consider it as such.

Q. They had been leasing that property prior to that time, hadn't they?

A. No, there hadn't been no lease on it up till then.

Q. They had been renting it from you?

A. That is right.

Q. What rent had they been paying?

A. \$50 a month.

Q. And what rent were you going to get under the lease? [85] A. \$50.

Q. You are using it yourself now? A. Yes.

(Testimony of Vern Markee.)

Q. And how long did that lease, how long did the Rand Truck Line occupy that terminal before you cancelled the lease? A. Approximately a year.

Q. Why did you cancel it?

A. They broke their lease and didn't pay their rent.

Q. And did you sell your stock to Loren Markee?

A. Yes.

Q. And what did he pay you for it?

A. I got a '41 Chevrolet coupe.

Q. He gave you a '41 Chevrolet coupe for it?

A. I believe it was a '41.

Q. He gave you a '41 Chevrolet coupe for your stock in the Rand Truck Line?

A. That is right.

Q. Now, let's talk about the Delake terminal.

A. While we are on that stock, we might add that my wife didn't get anything for hers.

Q. She turned hers over to Mr. Taylor, didn't she? A. After he insisted on it, yes.

Q. Now, the terminal at Delake is on leased ground, is it not? A. Yes.

Q. In whose name is the lease, do you know? [86]

A. Mr. Thayer.

Q. I know, but it was signed by yourself personally or by Rand Truck Line?

A. I never saw the lease. The Portland manager at the time made the lease agreement.

Q. Now, who paid for building the terminal at Delake? A. I paid for part of it.



(Testimony of Vern Markee.)

Q. How much of it did you pay for?

A. Approximately \$1,000.

Q. And who paid for the rest of it?

A. The rest of it was financed by the bank at Taft.

Q. Now, as a matter of fact the Rand Truck Line paid a lot of funds out to build that terminal, did they not?

A. Well, the only funds that they paid out were financed through the bank as far as I know.

Q. As a matter of fact, Mr. Markee, didn't Rand Truck Line pay out \$1,255.41 to help build that Delake terminal?

A. Well, the Delake terminal was built in two sections, the same way as the Sheridan terminal. The original section of the terminal I built myself and it cost approximately a thousand dollars.

Q. And how about the second section?

A. That was paid by the company.

Q. Paid by the company. In whose name—did you claim that you owned that terminal at that time? [87]

A. I owned a good share of it.

Q. And when you went to what is now the North Lincoln Bank and borrowed some money on it—

A. Mr. Taylor did that.

Q. Mr. Taylor did that. Didn't you borrow some money on that, the first mortgage on it?

A. Maybe I did.

Q. Borrowed \$1,500 on it, didn't you?

A. I believe that is right.

Q. And then you sold the terminal to the com-

(Testimony of Vern Markee.)

pany? A. No. Mr. Taylor took the terminal.

Q. Did you know that you had gotten a credit on your investment account for \$1,919 on the Delake terminal? A. That is right, yes.

Q. So you sold it to the company for \$1,919 subject to \$1,500 mortgage, or whatever the balance was on that \$1,500 mortgage, is that right?

A. Well, that was another one of these messed up deals. I had owned that terminal a year before this addition had been put on there for which I didn't receive any rent.

Q. Well, why didn't you receive any rent? You were controlling the company.

A. The company wasn't in a position to pay out any more money.

Q. That company paid for part of that terminal and then you sold it back to the company. [88]

A. I actually never got any money out of it.

Q. You got your indebtedness decreased, didn't you? It was entered as a credit to you.

A. Well, that officers account, yes, if you want to credit the officers account. I had \$1,000 of my own money in the terminal plus a year's rent coming at that time.

Q. Did you know that that credit was given to you on the books of the Company at the time it was made? A. Yes, Mr. Taylor told me.

Q. It was done with your knowledge and consent? A. Yes.

The Referee: You stated you had \$1,000 in the

(Testimony of Vern Markee.)

Delake terminal and a year's rent. What about the \$1,500? Did the Company borrow that or——

A. No. The Company borrowed that. The original terminal was built about 24 feet long and cost approximately \$1,000, and the mortgage, the money was borrowed on it after the terminal was enlarged and that is what that money was for.

The Referee: You didn't get any money on that \$1,500 mortgage?           A. No, sir.

(Chattel mortgage and note dated August 17, 1946, signed by Vern Markee, so produced, was thereupon marked Trustee's Exhibit 12.)

Q. (By Mr. Bollenbeck): Are you sure you are not mistaken about [89] not getting any money on this Delake terminal?

A. I didn't receive a dime.

Q. I am going to hand you Trustee's Exhibit 12, which is in amount \$1,300, dated August 17, 1946, in favor of you personally and also a note signed by you personally on the bank of \$1,300, on the Bank of Newport. Now, look that mortgage over and see if you can't refresh your memory as to whether you personally didn't get some money on that mortgage.

A. No, sir. If you check up on the books you will find it cost around \$1,300 to \$1,500. That was paid to Beverage & Hart. I don't know whether it is on the books or not, but that is what the bill was because the money was borrowed after the bill was submitted.

Q. Now, who are Beverage & Hart?

(Testimony of Vern Markee.)

A. That is this construction contractor, building contractor.

The Referee: Was that for the second addition?

A. Yes. The first addition was paid for at the time it was built by myself.

Q. (By Mr. Bollenbeck): And this was supposed to pay for the second part, is that right, in addition to what money the company paid out, this \$1,300 plus the \$1,255 that the company paid, is that supposed to pay for the second addition?

A. I didn't know the company paid out twelve hundred and some dollars.

Q. We have got the officers account charged, you charged with [90] \$1,255 for building the coast terminal.

A. Well, I don't know how that could be set up there because the money, after we received a statement from Beverage & Hart I went down to the bank and the banker loaned enough money to pay the construction cost. Where that \$1,200 in the coast terminal—Beverage & Hart also built the McMinnville terminal, but what the \$1,200 is doing on there I don't know. I am sure I didn't get any of it.

The Referee: Mr. Bollenbeck, have you quite a number of questions? We will have a recess if you have.

Mr. Bollenbeck: I would like a recess.

(Short recess.)

Q. (By Mr. Bollenbeck): I want to hand you Trustee's Exhibit 11, Mr. Markee, which is the bill

(Testimony of Vern Markee.)

of sale that you gave Rand Truck Line and particularly refer you to one Chevrolet panel 1941 half-ton truck, and ask you if you know what happened to that truck.       A. That was sold.

Q. What was the amount that you received for it?       A. Approximately \$600, I believe.

Q. Are you sure it wasn't \$800?

A. I am not sure whether it was \$600 or \$800.

Q. What happened to the money?

A. That was used in the business.

Q. Are you sure it wasn't used to purchase a 1938 Ford for [91] yourself, purchased, by the way, from Mr. Otto Heider?

A. I believe that is right.

Q. That is right. And did you take title to that '38 Ford in your own name?       A. Yes.

Q. Although the Chevrolet was a company asset?

A. Yes. It is one of the pieces of equipment that I turned in when I went into it.

Q. And what happened to the '38 Ford?

A. That was traded on a car.

Q. You traded it in on a Cadillac, didn't you?

A. Yes, that is right.

Q. Have you still got the Cadillac?       A. No.

Q. What happened to the Cadillac?

A. That was sold.

Q. What happened to the money from that?

A. It went into the Sheridan terminal.

Q. Well, now, when did all this happen? I thought the Sheridan terminal was paid for by the thousand dollars you put into it and the \$1,300 that



(Testimony of Vern Markee.)

you say you paid to Beverage & Hart and the \$1,300 or so charged against you on the company books. Now, did it cost that much more to build that terminal?

A. That Beverage & Hart deal you are referring to is on the coast terminal. [92]

Q. Oh, pardon me. This terminal at Sheridan cost \$8,000. So in addition to the money shown on the books charged against you and shown as going into the Sheridan terminal we have an additional six or eight hundred dollars of company funds that went into the Sheridan terminal, is that right?

A. Well, there is approximately a year there wasn't any rent paid on the Sheridan terminal too.

Q. I am not asking about that. This went into the building of the terminal? A. Yes.

Q. Now, when you left Rand Truck Line you took another Chevrolet along with you, didn't you?

A. Yes.

Q. And where did that car come from?

A. That was my own original property.

Q. How long had you had it?

A. About a year and a half.

Q. From whom did you buy it?

A. Either Smith or Fields in Portland.

Q. And how did you pay for it?

A. Paid for it with cash.

Q. How much cash? A. Around \$1,800.

Q. Where did you get the cash?

A. Do I have to answer all these questions? [93]

The Referee: Yes, you have to answer even that.

(Testimony of Vern Markee.)

A. I sold my house here in Portland.

Q. (By Mr. Bollenbeck): How much did you sell your house in Portland for? A. \$11,000.

Q. Did you put the money in a bank account?

A. After the mortgage was paid, yes, I put the balance that I had left in the bank account.

Q. How much was your mortgage?

A. I am not sure. I believe I realized about \$2,500 out of it.

Q. You realized after payment of the mortgage about \$2,500? A. Yes.

Q. What bank did you put the money in?

A. It was either the First National of Portland or at Sheridan.

Q. And out of that \$2,500 you paid how much for this Chevrolet?

A. Seventeen or eighteen hundred dollars.

Q. Where did you get the \$8,000 to build the Sheridan terminal?

A. Borrowed it from Mrs. Haas.

Q. Well, how much did you borrow from her?

A. Oh, I borrowed \$2,500 the first time and then two years later I borrowed about \$5,000.

Q. I am talking about the money to build it. Now, you didn't wait two years to build it.

A. Well, both terminals were built on the same deal. They were built 24 by 30 to start with and they were both enlarged. [94] This one, the building at Sheridan is now 26 by 118.

Q. In other words, you say that you borrowed

(Testimony of Vern Markee.)

\$2,500 from this Mrs. Haas—how do you spell her name?      A. (Spelling) H-a-a-s.

Q. Where does she live?

A. She lives at Sheridan.

Q. What is her first name or initials?

A. L. Letitia. She is the one that owned the property.

Q. Letitia Haas?      A. Yes.

Q. You borrowed \$2,500 from her first?

A. Yes.

Q. And when you enlarged the terminal you borrowed \$5,000 more from her?

A. I don't believe it is quite \$5,000.

Q. Did that \$5,000 include the original \$2,500?

A. No.

Q. How much of a mortgage is against it now besides Mr. Heider's mortgage?

A. I believe Mr. Heider's mortgage has been released.

Q. You mean this Rand Truck Line mortgage against your property has been released?

A. I believe that is right, Mr. Heider.

Mr. Heider: I think maybe it is part of the lease file on the real estate. [95]

Q. (By Mr. Bollenbeck): When was that filed, do you know, Mr. Markee?

A. I don't know whether it was filed or not. I know it was included in the mortgage and after the mortgage was paid off a little bit I believe Mr. Heider released it.

(Testimony of Vern Markee.)

Q. Did you pay him anything for the release of it? A. No, sir.

Q. How much of a mortgage has Mrs. Haas got against it? A. She has around \$4,000 now.

Q. Now, how much did you pay to Mr. Heider as a down payment upon your home? A. \$1,500.

Q. And you bought that at the time you were still with the Rand Truck Line? A. That is right.

Q. Where did you get that money?

A. The balance of what money I had left over selling the other place and I had some.

Q. That was approximately \$700. Where did you get the rest of it?

A. I had some money in the bank.

Q. What bank? A. Bank of Sheridan.

Q. About \$1,000?

A. I paid Mr. Heider \$1,500. [96]

Q. Well, you had \$500 left over from your house sale here in Portland, is that right? You had about \$1,000 in the bank? A. No, sir.

Q. Where did you have the money, where did you get the thousand dollars?

A. Well, I said I had some of it in the bank.

Q. Well, how much of it did you have in the bank?

A. Oh, I don't remember now. All I can remember is I paid him \$1,500.

Q. Well, I want to know where you got it.

A. Well, I earned it. That was three or four years ago. I sure didn't take it from Rand Truck Line, if that is what you are driving at.

(Testimony of Vern Markee.)

Q. Now, Mr. Markee, did you establish an account down at the North Lincoln Bank at Taft, Oregon?      A. Yes.

Q. And that was in substance an account in Rand Truck Line's name and your name too?

A. Yes.

Q. And you could draw personal checks on that account?      A. Yes.

Q. And Rand Truck Line could draw business checks on that account?

A. Just through the other office.

Q. Well, they could use that account to transmit funds to [97] Portland?      A. That is right.

Q. And you could use it for your personal account, is that right?      A. That is right.

Q. And Rand Truck Line money went into that account, didn't it?      A. Yes.

Q. And did you put any money into it yourself?

A. Yes.

Q. Do you have the statements on those accounts?

A. No.

Q. Do you know where they are?      A. No.

Q. Are you sure you didn't get this \$1,000 to pay or \$1,500 to pay Mr. Heider out of that account?

A. Yes, I am very sure.

Q. Well, what account did you get it out of?

A. I had some money of my own.

Q. Where?      A. In the bank.

Q. What bank?      A. The bank at Sheridan.

Q. Do you have your cancelled checks and bank statements?      A. I have some of them, yes.



(Testimony of Vern Markee.)

Q. Can you produce them, produce this \$1,500 check that you paid [98] to Mr. Heider?

A. Yes, sir.

Mr. Bollenbeck: I would like to ask an order of the Court to produce that at the same time he produces that agreement.

A. That agreement is coming right up.

The Referee: Mr. Hickson is bringing that over.

Q. (By Mr. Bollenbeck): Now, what was the reason of mixing company funds and your personal funds down there in that North Lincoln Bank?

A. Well, it didn't make any difference. All the accounts that were down on the coast at the time I was down there I was responsible for and they were all paid.

Q. You mean the accounts payable?

A. The accounts payable.

Q. What about the accounts receivable?

A. Well, all the accounts receivable went into the checking account and all the freight bills were charged out against that division.

Q. As a matter of fact, Mr. Markee, when you left that division down there there were a lot of apparently uncollectible accounts receivable that had in fact been collected?

A. Definitely there were quite a number of them.

Q. And who was responsible for that condition?

A. The fellow that was down there before I went down there.

Q. Mr. Robinson?

A. That is right.

(Testimony of Vern Markee.)

Q. And were any of those during your time down there?

A. Every bill that was down there while I was down there was paid when I went out there.

Q. I am talking about your accounts receivable. Now, there were a lot of accounts receivable down there that the money never went into the company books.

A. That is right.

Q. And where did the money go that didn't go to the company?

A. Mr. Robinson had been down there and collected around \$4,000, if I remember.

Q. Did Mr. Robinson work for you down there, Rand Truck Line?

A. No, sir, he did not.

Q. Did he continue to work for you when you went down there?

A. He did not.

Q. Was there any money of Rand Truck Line during your stay down there that was diverted?

A. Definitely not.

Q. Was Robinson under bond at the time he was down there?

A. No.

Q. Didn't you have your employees under bond?

A. No, sir. To clear the record there, I was only down to the Coast myself for around twenty-five days.

The Referee: You have a right to explain any answers that [100] you want.

A. The reason I went down there is that this man went down and skipped out and left a mess and I went down and straightened it out, and before I left I put a responsible man in the position and set-

(Testimony of Vern Markee.)

tled up all the accounts that were charged out while I was down there taking care of that territory.

Q. (By Mr. Bollenbeck): Where did the bank statements and the cancelled checks from that joint account, yours and the Rand Truck Line, where did they go to?

A. I don't know. The Agent probably picked up some of them. I never got them.

Q. You mean you never got your personal cancelled checks back?

A. No. When I left there, why, when they had that fire at McMinnville, and I went back down to McMinnville and didn't get back out to the Coast until some time later.

Q. Did you take all of your personal money out of that account?

A. I didn't have any personal money in there at that time.

Q. Personal money of yours had gone through that account? A. That is right.

Q. But at the time you left you didn't have any personal money in?

A. That is right. All I deposited in there was my pay checks.

Q. Who reconciled that account, who balanced it?

A. Mr. Taylor.

Q. How could it be balanced with your personal funds in there? [101]

A. That was simple. Everything that was down there was charged up to me and I paid for it.

(Testimony of Vern Markee.)

Q. When was this account in existence down there?

A. Just before the fire when the terminal burnt at McMinnvile.

Q. Neither the Judge nor I know when that fire occurred. Can you tell us by calendar months and dates?

A. I believe it was in June, about 1946. I am not sure. Mr. Taylor can tell you.

Q. Was he with the company at that time?

A. No.

Q. So he wasn't with the company at the time this bank account was established and in existence?

A. No.

Q. And who did balance that bank account?

A. Mr. Taylor.

Q. Well, how long was it in existence?

A. Around twenty days or so.

Q. You mean you went down there and established a bank account for yourself and the company and put company money in it and put your money in it and closed the account out all in twenty days?

A. No, I didn't say it was closed out. It was used for about twenty days, and it wasn't closed out until some time later. When the terminal burned in McMinnvile we forgot about everything else and when the agent took off, then, when the men took [102] over when I left, why, we started a different bank account. He wrote checks payable only to Rand Truck Line, McMinnvile.

The Referee: Mr. Bollenbeck, Mr. Hickson is

(Testimony of Vern Markee.)

here now and he has that agreement if you want to look at it.

Mr. Bollenbeck: Yes, I would, yes.

Q. By this agreement, Mr. Markee, you were selling out the Markee Truck Line for \$9,000 and the Rand Truck Line agreed to pay your debts in the amount of about \$3,000 and issue you 25 shares of stock of par of \$100. I think that was what was really done, they really did issue you 500 shares of stock with a par of \$10. A. \$5,000.

Q. So they issued you \$5,000 worth of stock and \$3,000 they assumed your liability.

A. There is no consideration in there for any permits, which you was trying to get out of me awhile ago.

Q. Well, that was a part of the whole agreement, wasn't it, a transfer of the permits to them?

A. No, sir. There was no consideration in there in that \$9,000 for any permits.

Q. You have been talking to your lawyer about "no consideration," but it was a part of the whole deal that you were to assign the permits to them. It provides in here as a part of this sale "Sellers do hereby promise to sell and assign to the purchaser all PUC permits and Interstate Commerce permits for [103] the operation of trucks as common carriers." That was part of your agreement to assign and set over, and you further provide that if you cease to become a stockholder then at his request Rand Truck Line agrees to assign and set over said



(Testimony of Vern Markee.)

permits now owned by Rand Truck Line to the said Vern Markee.

A. That is right. That is the only way we would consider going into partnership with Bob Rand.

Q. Well, now, this agreement in addition provides, Mr. Markee, that as long as you are a stockholder of the Rand Truck Line that you do not engage in any business in competition with the Rand Truck Lines.

Mr. Hickson: Your Honor, I wonder if I could have an appearance in behalf of Mr. Markee. My name has been dragged in by counsel here.

The Referee: There is no need for an appearance. No issue before the Court. We are merely getting at the facts, Mr. Hickson. Mr. Markee has been brought in under subpoena under Section 21-a of the Bankruptcy Act and to be examined in regard to his transactions with the Rand Truck Line. There is no issue, nothing involved at this time except to get at the facts.

Mr. Hickson: May I suggest possibly the contract is the best evidence and should be shown to the witness.

The Referee: Well, I think that should be done.

Mr. Bollenbeck: Well, if there is any question as to whether [104] I was reading it correctly, I will be glad to.

The Referee: There is no issue at this time. We have asked him to produce the contract and we would like to have a copy of it in evidence. Introduce this but substitute a copy.

(Testimony of Vern Markee.)

Mr. Hickson: Your Honor, I will need that in another proceeding before the PUC, so I would like to have that, substitute a copy.

Mr. Tonkon: Just a minute. I suggest you have that marked and introduce it.

(Copy of contract between Mr. Markee and Mr. Rand, so produced, was thereupon marked Trustee's Exhibit 13.)

Q. (By Mr. Bollenbeck): Mr. Markee, when did you start operating down at Sheridan after you ceased taking an active part in the Rand Truck Line?

A. The permit was reinstated in August of 1947.

Q. When did you cease to be a stockholder of the Rand Truck Line?

A. The last of February, 1948.

Q. For a period of several months you were operating in competition with the Rand Truck Line and were still a stockholder of it, is that right?

A. Yes. I might add that anything we hauled could have been hauled by thirty or forty other carriers located here in the [105] City of Portland during that time. As far as that goes, it could have been hauled by any one of a hundred carriers within this vicinity.

Q. Now, Mr. Markee, do you know of a shipment that went to a Mr. Forrester down at Daleyville, Oklahoma?

A. Yes.

Q. Did you collect the money for that shipment?

A. Yes.

(Testimony of Vern Markee.)

Mr. Hickson: Mr. Referee, may I ask a question? I am wholly unfamiliar with your procedure, but it is perfectly obvious to me in the short time I have been here that Mr. Taylor here and counsel are trying to lay the grounds for a damage suit that is pending out at McMinnville against Mr. Markee. It hasn't anything to do with this case.

The Referee: Any transaction of this man with the corporation is relevant here. That is all I want, and he is not entitled even to counsel.

Mr. Hickson: That is all I wanted to know.

The Referee: All we do is get at the facts.

Mr. Hickson: I just wanted that in the record.

The Referee: If there is any issue brought up later, why, the matter can be gone into at that time.

Q. (By Mr. Bollenbeck): Now, that shipment to Oklahoma was handled through the Rand Truck Line, was it not? A. Yes. [106]

Q. And you collected the money for the entire shipment? A. Yes.

Q. Still have retained it? A. That is right.

Q. I understand you refuse to pay it over to the Rand Truck Line?

A. I didn't refuse to pay it. I will pay it if they will render a statement just like any other business house instead of hitting me up on the street for it.

Q. Who hit you up?

A. Who do you suppose? Mr. Taylor.

Q. As a matter of fact Clayton Markee asked you for it?

A. Clayton Markee has asked me for it.

(Testimony of Vern Markee.)

Q. If we submit you a statement will you pay the same?

A. The money is in the bank waiting for a statement. If you get it in before the 10th it will be paid on the 10th.

The Referee: Anything else now?

A. I would like to add here too that there is plenty of business in this territory between here and the Coast for two or three truck lines, but it seemed that Rand Truck Line owned it all and nobody else had any rights down there to haul anything, and instead of them getting all, why, they come out on the short end of it, and they are trying to blame me for it. We have never solicited any business any time we have been in business down there. We haven't had to. We have had more than [107] we can take care of. And I don't want to take the blame for somebody's bull-headedness.

The Referee: Have you any other questions?

Mr. Bollenbeck: I think that is all.

The Referee: All right, Mr. Markee. Thank you very much.

Mr. Bollenbeck: The Court indicated earlier in the day that they were going to adjourn this meeting.

The Referee: Well, now, what else do you want?

Mr. Bollenbeck: There were some bank statements, your Honor.

The Referee: No, there was only a cancelled check that he was going to show that he paid to Mr.

(Testimony of Vern Markee.)

Heider for the purchase of his property. That was the only other thing, wasn't it?

Mr. Heider: If the Court please, I will verify what Mr. Markee said about that. That was right. He paid me \$1,500 down on the place. I know that is what the check would show if it was produced here. Since he mentioned it I am certain that is what it was. And the figures he give on the place, as you say, he was doing the paying there and they are more accurate than my figures. I am sure they are.

Mr. Bollenbeck: I have no special desire to have it continued, your Honor.

The Referee: All right, I will not continue it at this time. I think if we should want any further information Mr. Markee will probably come voluntarily, won't you, Mr. Markee? [108]

A. Yes, sir.

The Referee: Thank you. Then, this matter will be adjourned and you will proceed to prepare the order for the sale of the assets free from liens.

(Witness excused.)

Mr. Bollenbeck: There is one question, your Honor. It just occurred to me that I would like to ask Mr. Markee—I don't know—Mr. Markee, are you attempting to negotiate the purchase of the mortgage on the Delake terminal?

Mr. Markee: No.

The Referee: That is all.

(Hearing adjourned.) [109]



## Certificate

I, Glenn G. Foster, hereby certify that on Wednesday, July 6, 1949, I reported in shorthand certain testimony and proceedings had in the above-entitled cause; that I subsequently caused my said shorthand notes to be reduced to typewriting, and that the foregoing transcript, consisting of 109 pages, numbered 1 to 109, both inclusive, constitutes a full, true and accurate transcript of said testimony and proceedings, so taken by me in shorthand on said date as aforesaid, and of the whole thereof.

Dated this 28th day of July, A.D. 1949.

/s/ GLENN G. FOSTER,  
Court Reporter.

[Endorsed]: Filed July 28, 1949, Referee.

[Endorsed]: Filed October 23, 1956, U.S.D.C.

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March 14, 1956, 10:00 A.M.

The Referee: This matter comes on upon the objections to the claim of Otto Heider. I believe it was originally set for hearing February 28, 1956, at 2:00 p.m., and by the consent of counsel it was continued to be heard at this time and date.

Mr. Dougherty: May the record show on behalf of the Creditor Otto W. Heider, we would like to submit at this time a motion to dismiss, on the ground that the controversy involved here has, by authority of the Referee, been submitted to the Circuit Court of the State of Oregon for Multnomah

County, and is now pending. It is our understanding that the complete controversy was submitted to that court, and thereby this Court deprived itself of jurisdiction in the matter.

We move for dismissal of the objections on this added ground: A prior hearing in this matter was held, I believe in June of 1949——

Mr. Miller: July 6, 1949.

Mr. Dougherty: We are now nearly seven years after that time. At that time the Referee stated that if the Trustee had [2\*] any objections to the claim that the Trustee would file such objections. They were not, as a matter of fact, filed for nearly seven years after that. Accordingly, I believe there's been undue laches, which has had a very material adverse effect upon the creditor, and that the stale objections should not now be heard.

Mr. Miller: If the Court please, we haven't read this motion to dismiss ourselves, your Honor, but I think it goes without saying that this Court can never rob itself of jurisdiction under 57 of the Bankruptcy Act, to hear a claim.

There is a possibility that there are questions in the Circuit Court matter, some of which this Court would never have had jurisdiction over. Notwithstanding that, however, and even if it were possible for the Court to rob itself of jurisdiction here, which I don't believe is possible under the Bankruptcy Act, the proceeding over there has never come to trial; there is no adjudication over there, and hence

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\*Page numbering appearing at top of page of original Reporter's Transcript of Record.

the matter certainly isn't *res judicata*, or anything like that, and I think that the Court, at any time prior to a judgment over there, would retain jurisdiction to hear those matters which are designated to this Court by the Bankruptcy Act, and that is all that is here.

Now, with regard to the time elapsed, there is nothing in the Bankruptcy Act which says when a bankrupt may file objections. He may file objections at any time before closing of a case, and without taking a lot of time I will say if there has [3] been delay here, the record in the Circuit Court will show the delay has been as much on the part of the Claimant as of the Trustee. The great length of time between the pleadings due over there and the time within which they were filed will take many years. I don't think he is in good faith here when he talks about laches.

Mr. Dougherty: If the Referee please, I would like to take exception to counsel's comment. In the first place, the counsel who made the comments doesn't have knowledge in the matter, and in the second place, it is true that counsel for the Trustee was required to file, I believe, five different complaints, many of which were found to be insufficient upon demurrer, by the Court, and the last thing that happened was in October of last year, when the Trustee's demurrer to our affirmative answer in that proceeding was overruled. Since that time my file indicates that the Trustee has not taken action.

This identical question was presented to the Circuit Court on that demurrer, the question being

whether or not the entire controversy had been submitted to that court, and the judge, by his ruling and by his comments from the bench, indicated that he considered that it had. It may be as a technical matter that this Court retains jurisdiction. I don't believe that it does, but even assuming that it does, I think as a matter of comity between courts this Court should not exercise any jurisdiction while the matter is still pending before the [4] Circuit Court, and I believe there is no question that identical issues are involved even though the proceeding in the Circuit Court involves other parties and additional issues.

Mr. Bollenbeck: Now, if the Court please, I would like to answer counsel. The demurrer was sustained—or overruled, rather, by Judge Dobson in the Circuit Court. One of the things that was not before the Court at that time was that Otto Heider had filed a claim here. That was not in the complaint, it was not in the answer—I mean it was not in the demurrer. I demurred to the affirmative counterclaim and there was no allegation in the counterclaim that this claim had been filed by Otto Heider. It was, therefore, not in the record that he had submitted to this Court's jurisdiction first. The case is now pending over there on a plea in abatement to the counterclaim, in which plea in abatement I did set up that this claim had been filed in this Court.

In other words, if there is a conflict in jurisdiction it is a conflict that is created by Mr. Heider's own act. He submitted to this jurisdiction, to this Court, and then attempted to raise the same issue over



there, and as I said, the demurrer did not and could not show that this claim had been filed. The plea in abatement does show that this claim had been filed.

Now, the issues are these: The pleadings are different and the dates are different. It is an entirely different question [5] over there, and at that time I briefed the law, and the law, I think, is plain that this Court, even with the Referee's consent and everybody's consent, cannot release its jurisdiction. This is the only court that can determine how the assets in its possession are to be disbursed. The state courts have concurrent jurisdiction in the collection of assets, which is what that case is about. This is the reverse of the picture, a picture on the distribution of the assets, that the Court has in its possession now.

The Referee: Let me clear up one question in the record. Mr. Dougherty spoke of a hearing on this matter in July of 1946. That was——

Mr. Miller: 1949, your Honor.

The Referee: 1949? What was the nature of that hearing? Was that an examination——

Mr. Bollenbeck: That was an examination of Mr. Heider and Mr. Vern Markee, and it involved much more than is here.

The Referee: Under Section 21-a of the Bankruptcy Act.

Mr. Dougherty: If the Court please, reading from the transcript, your Honor at that time said, "We expect to sell it" (meaning the property on which Mr. Heider had liens, and he has turned over those evidences of title)—"We expect to sell it for



considerably more than the amount you claim, and the matter of determining the validity and amount of your lien will be taken up and if the Trustees have any objections to it you will [6] be served with the objections and then there will be a further hearing on it." Those objections weren't filed for over 6 years later.

The Referee: Well, I think that is due to the fact that in the state court where the issues are enlarged, they were weighing whether they could determine in the state court, but this court is not accustomed to waiting 6, 7, and 10 years to get things determined. The purpose of the Bankruptcy Act is to liquidate the assets as quickly as possible and see that they are paid to the creditors according to the equities of the case and pro rata to the general creditors. I think Mr. Heider is just as anxious as the rest of us to try to get this matter determined once and for all. The only matter before this Court is the validity of his claim and the mortgage securing his alleged claim. I don't think this Court can relinquish paramount jurisdiction to determine that matter.

I suggest that we proceed and see if it can be determined at this time. Mr. Heider has the right of review. It can be quickly granted to him if he should not be satisfied with the Referee's determination, so you may proceed.

Mr. Bollenbeck: Do I understand it is the Trustee's duty to go forward first?

The Referee: That's right.

Mr. Miller: If the Court please, in the interest of

conservation of time, if the examination of July 6, 1949, of Mr. Heider [7] is not deemed part of the record in this case, we would ask that it be deemed part of the record of this hearing.

The Referee: You mean the examination?

Mr. Miller: The examination of Mr. Heider. It would save a lot of time going over the same matters that were gone into on that date.

Mr. Dougherty: It is my understanding, your Honor, that it was a part of the record.

The Referee: You stipulate that it may be made a part of the record in this hearing?

Mr. Dougherty: Yes.

Mr. Bollenbeck: Call Mr. Rand, please.

The Referee: Mr. Rand, will you come around here, please? Your full name, please.

Robert R. Rand: My full name is Robert Roy Rand.

#### ROBERT R. RAND

was thereupon produced as a witness in behalf of the Trustee and, being first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Bollenbeck:

Q. Mr. Rand, at one time you and your wife were majority stockholders in the Rand Truck Line, were you not? A. Yes, sir.

Q. And what percentage of the stock did you own, do you remember?

A. Repeat the question.

(Testimony of Robert R. Rand.)

Q. What percentage of the stock did you own, do you remember?      A. Eighty per cent.

Q. And who owned the rest of it at that time?

A. At the time we sold out?

Q. Yes.      A. Mae Potts.

Q. Who was Mae Potts?

A. A sister-in-law.

Q. Now, did Vern Markee become a minority stockholder in your corporation shortly before you sold out?      A. Yes, he did.

Q. And did you and he conduct negotiations for the purchase of your stock and Mrs. Potts' stock?

A. Yes, he did.

Q. And did you arrive at a deal?

A. Yes, we did.

Q. And what was that deal?

A. He was to pay me for the 80 per cent, after Vern became a third partner, or a third stockholder in the corporation—and he agreed to purchase all of the stock that we owned, both myself and Mrs. Potts.

Q. And how much money was he going to pay for it?

A. He was going to pay \$40,000 for it. [9]

Q. And did he have \$40,000?

A. I wouldn't know.

Q. Well, did you discuss the financing arrangements with him as to how this forty thousand was to be paid?      A. Yes.

Q. And what decision did you arrive at, or what action did you take?

(Testimony of Robert R. Rand.)

A. He was going to finance it and pay me in a way that would be satisfactory to me.

Q. And how was he going to finance it, or how did he finance it?

A. Well, he borrowed the money and paid me.

Q. From whom did he borrow the money?

A. He borrowed the money from Otto Heider.

Q. When did Otto Heider first appear in the picture in this transaction?

A. At the time of the negotiations. I don't remember the exact day or anything, but he was a party to the negotiations. He had to O.K. the payment of the money.

Q. Was it before the deal was closed?

A. Well, no. Vern and I closed the deal.

Q. Well, was it before the papers were signed on the deal?

A. Of course it would have to be. The finances were arranged before the deal was closed.

Q. And did Mr. Heider know what the deal was?

A. I am quite sure he was familiar with it. [10]

Q. And Vern was buying your stock?

A. I am quite sure he was familiar with it. I can't say for sure.

Q. And did you and Vern discuss it in his presence?

A. I don't think ever; I don't think ever the three of us met at any one time.

Q. Do you know where the papers were prepared, the mortgages and so forth?

(Testimony of Robert R. Rand.)

A. Well, there never was any papers prepared, actually excepting a contract.

Q. Who prepared the contract, do you know?

A. Otto Heider's office.

Q. Otto Heider's office. When was that? What was the contract for?

A. For the payment of the money.

Q. Between you and Otto Heider?

A. No, between Vern and I. Otto Heider had nothing to do whatever with the negotiations. He was purely and simply—it was through his organization that the thing was financed, but personally Otto Heider had nothing to do with it.

Q. Yes, but did he represent either you or Mr. Markee in this transaction?

A. You mean as a legal attorney?

Q. Yes.

A. No, it wasn't necessary. We needed no advice or attorney to handle the negotiations. [11]

Q. Now how were you paid, Mr. Rand? I mean how much, if any, cash did you receive?

A. I received \$8,000 in cash and the balance on a contract.

Q. You received \$8,000 in cash at the time the deal was closed?

A. I don't remember any more just when I received it but I am sure that I would have received it at that time.

Q. And the balance was paid in payments of \$500, wasn't it?

A. Five hundred dollars a week, yes, sir.



(Testimony of Robert R. Rand.)

Q. Five hundred dollars a week—\$32,000 was paid in that fashion? A. Plus interest.

Q. And Mr. Heider paid you some interest on that payment that was made?

A. Yes, he did.

Q. I want you to look over these checks, Mr. Rand, and I'll ask you whether those are the checks—I don't think you got all of them, but will you look over those checks and see whether those are the checks that Mr. Heider issued to you?

A. (Examining checks): This check doesn't have my signature.

Mr. Bollenback: He is referring now to a check dated November 2, 1945, in the amount of \$5,000, signed by Otto Heider, payable to Vern Markee and the Rand Truck Line.

A. Here is also another one, but I think there must be a slip-up on this, but it doesn't have my signature on it.

Mr. Bollenback: He refers now to a check dated——

Q. Well, the check is payable to you, Mr. Rand, and to your wife. [12]

A. Well, the bank shouldn't have cashed it in that way. It was endorsed by neither one of us.

Mr. Bollenback: For the record, this check is dated December 2, 1944, payable to R. R. Rand and/or Goldie I. Rand, \$500. It has a penciled notation on the front, "Ind. missing," and on the back it says: "Placed to the credit of within named

(Testimony of Robert R. Rand.)

payee. Endorsement guaranteed. The First National Bank."

A. Well, that apparently clears it up. Those two checks I don't recognize. The others I think were the original checks that I endorsed and received in payment.

Q. Will you count them, Mr. Rand? They are all \$500, aren't they, except the interest checks?

A. I didn't check that.

Q. Eliminating the interest checks, count and see how many there are.

A. (Counting): Sixty-three, I count.

Q. That would be \$31,500?

A. Unless I overlooked one.

Q. Actually that is my count too, Mr. Rand.

A. Well, I believe that——

Mr. Dougherty: Will counsel extend me the courtesy——

Mr. Bollenback: Yes, I was just going to put a rubber band around them.

Mr. Miller: If the Court please, while Mr. Dougherty is looking at that, I just handed him a supplemental objection. I apologize [13] for the lateness, but it doesn't change any of the facts.

Mr. Dougherty: We will object to its being received at this time.

The Court: We will go into that later.

Q. (By Mr. Bollenback): Mr. Rand, what did the corporation receive in return for the execution of this note and mortgage?

Mr. Dougherty: If he knows of his own personal

(Testimony of Robert R. Rand.)

knowledge. A. The question again, please?

Q. What did the corporation receive in return for the execution to you and your wife of this note and mortgage in the amount of \$43,560?

A. I don't know. I don't understand it. I don't understand what note you refer to.

Q. Well, I will hand you Trustee's Exhibit 3, which is a promissory note signed by the Rand Truck Line, Inc., payable to Mrs. R. R. Rand, in the amount of \$43,560, and ask you what you gave the corporation in return for that note and the mortgage that secured it?

A. I didn't sign this note and I can not—it is unfamiliar to me. I never saw the note before, as far as I know.

Q. You never saw the note before?

A. I never saw the note before as far as I know. As far as I can remember I have never seen the note before.

Q. Did you and your wife discuss this transaction? A. Yes, we did. [14]

Q. Can you tell me why she endorsed this note "Without recourse or liability?"

A. Well, the only reason that she would have the authority to do it was that she was secretary of the Rand Truck Line and she would have authority to do it.

Q. Mr. Rand, maybe you misunderstand the situation. This is a note and mortgage that was given to you and your wife personally, not to the corporation.

(Testimony of Robert R. Rand.)

Mr. Dougherty: I object to the form of the question. The note shows on its face that it wasn't given to this witness.

The Referee: Has that note been received in evidence?

Mr. Bollenback: It was received at the other hearing, your Honor.

Q. Well, Mr. Rand, let me ask you this: Was there any discussion between you and the other parties as to whether this should be payable to you or to your wife?           A. No.

Q. There wasn't?           A. No.

Q. I am going to hand you Trustee's Exhibit 6, together with a carbon copy of it, and ask you whether or not the title "Mrs" wasn't inserted after the mortgage was typed up. I refer to this line, right here (pointing), about the seventh line down.

A. The only excuse I could offer for that, I went on a hunting trip and I told Mrs. Rand at the time that I left, if it was [15] necessary to sign any papers that she could go ahead and sign them, and this might have happened at the time I was on the hunting trip.

Q. Then it was contemplated that this originally was to be payable to you, is that right?

A. To either one of us.

Q. To either one of you?

A. To any one of the stockholders of the corporation. It was actually paid to each stockholder and divided.

(Testimony of Robert R. Rand.)

Q. Now, can you tell me why this endorsement is on here, "Without Recourse or Liability?"

A. I don't know. This is Mrs. Rand's signature.

Q. It is her signature?

A. It is her signature.

Q. And to your knowledge you never saw that note before?

A. I don't recognize this note. I am sure I have never seen this note before.

Q. Well, now I am going to ask you again, what did the corporation get in return for executing a mortgage payable to your wife—you say you are fully familiar with the situation—payable to your wife?

A. No, I didn't make a statement I was fully familiar.

Q. Well, you said the transaction contemplated that the mortgage was to be delivered to you.

A. No, I said there was never any mortgage. The thing was sold [16] on a contract. This document, I don't think was ever in my possession. As far as I know it was never in my possession. I held the stock of the corporation until each one of these checks was cashed and that was all the security that I needed. I held in my possession the stock of the entire corporation until such time as the last one of these checks was cashed and it cleared the bank.

The Referee: You are referring to Mr. Heider's checks?      A. Yes.

Q. Now, Mr. Rand, referring to Trustee's



(Testimony of Robert R. Rand.)

Exhibit 7, which is the minutes of the corporation, and I refer you to a stockholders' and directors' meeting held September 28, 1944, in which it is recited that you, your wife, Vern Markee, Florence Markee and Loren Markee were present. Do you remember that transaction, or that stockholders meeting?

A. No, I can't remember the details. I can't remember it.

Q. All right. I am going to refer you to the second page of the minutes of that meeting, the last full paragraph, in which it says: "It was moved and seconded that the president and secretary of the Rand Truck Line, Inc., together with the vice-president, borrow from Callie B. Heider, on assignment from Mrs. R. R. Rand, the sum of \$43,560.00, payable principal and interest in the sum of \$1,000.00 each and every month, beginning November 1, 1944, until the full amount due on said loan has been fully paid, and said three principal officers of the said [17] corporation are authorized to execute any documents, mortgages, notes, assignments, transfer of the property, assets, rights, stock, and all other interest of the said corporation, and which mortgage and pledge to remain in full force and effect until said borrowings have been fully liquidated."

A. No, I don't remember it. Twelve years is a long time to remember all the details. There's been a lot of water under the bridge.

Q. Was that money that Mr. Heider paid to

(Testimony of Robert R. Rand.)

you, that \$32,000, you say? Was that what was received for the execution of this mortgage?

A. No, there was \$40,000 received.

Q. Well, then, \$40,000, the money that you got for this stock, was what was given for that mortgage, is that right?

A. Well, that satisfied my claim to all the stock.

Q. Now in addition did the corporation receive anything for that mortgage?

A. Well, after I ceased to be president of the corporation I couldn't answer that. While I was president of the corporation, no.

Q. Did you discuss this mortgage with Mr. Heider and Mr. Markee?

A. No, I actually didn't ever know there was a mortgage existed.

Q. Do you remember going to that directors' meeting when you were all supposed to be present?

A. No, I don't.

Q. Do you know whether it was actually held or not? [18]

A. It would be difficult for me follow through all the details of that transaction. I couldn't say. I wouldn't want to say "yes" or "no." I would just rather leave it. Twelve years is a long time.

Q. Well, let's put it this way. As far as you know the corporation received nothing in return for giving this mortgage, is that right?

A. No, I couldn't say that.

Q. Well, what did it receive?

(Testimony of Robert R. Rand.)

A. Well, as far as I know, as I already stated, I don't recognize that note and mortgage.

Q. Well, was there some other contract in existence?

A. I wouldn't say I never had it because I handled a lot of money, and a lot of papers on the various deals. As long as the matter was closed, I proceeded to forget it, because I had a lot of other things to think about, but to the best of my knowledge I never remember of seeing that note. I couldn't say I never saw that note but I don't remember seeing that note, but it could be possible that it was in existence and that I held it. I wouldn't say that I didn't.

Q. Have you had very many transactions of this size in your life, Mr. Rand, involving yourself personally?

A. Well, quite a lot. This was about the largest I have had but I have handled many 25—and \$30,000 transactions, and I have been used to handling considerable money all my life. [19]

Q. You knew what the sense of an endorsement, "Without liability" would be, then, did you not?

A. No, I don't know.

Mr. Dougherty: If the Court please, I object to it. This witness did not make the endorsement. He is being asked about a third person's endorsement and asked to guess what might have occasioned it.

Mr. Bollenback: I am not asking that. I am just asking him if he knew then.

A. No, I don't know.

(Testimony of Robert R. Rand.)

Q. You don't know?

A. It would be absolutely void, according to what Webster's dictionary would say about it. It would be void.

Mr. Bollenback: For the present we have no further questions, your Honor. I would like to keep the witness here, though.

### Cross-Examination

By Mr. Dougherty:

Q. Mr. Rand, what was the condition of the Rand Truck Line when you sold your interest to the Markees? Was it solvent? A. Yes, it was.

Q. Was it on a cash basis?

A. It was entirely on a cash basis. It had no obligations or judgments or any claims against it that I know of, other than the current bills.

Q. This matter of financing between the Markees and Mr. Heider, [20] you knew that there was some financing arrangement?

A. I knew that, yes, sir.

Q. Did you know the details of it?

A. No, I did not. It was of no interest to me as long as I received my money for my stock. I had no further interest, except we remained friendly with them and wished them a great deal of success in the operation of the business.

Q. Do you know whether or not the business continued in a good solvent state for some time?

Mr. Bollenback: I am going to object to that.

(Testimony of Robert R. Rand.)

The witness severed his connections. He has no knowledge.

Mr. Dougherty: I asked him if he knew.

The Referee: He may answer if he knew.

A. I knew nothing about it whatever. I lost contact completely with the organization.

Mr. Dougherty: No further inquiries.

The Referee: Do you have something?

Mr. Bollenback: I don't think so but I would like to ask the witness to remain in the courtroom.

The Referee: May I ask one question? You mentioned that Mr. Heider prepared a contract between you and Vern Markee, whereby you agreed to sell and he agreed to purchase your stock in the Rand Truck Line. Was there such a contract?

A. I can't tell you whether there was, other than a verbal contract, or not. I can't tell you whether there was a written [21] contract or not because I held the checks and I held the stock and I had ample security for money owed to me and that was the main thing I was interested in, and I can't say whether there was any written contract or not.

The Referee: You don't have any such contract in your possession?

A. No, I don't. I don't have any of the papers at all.

Mr. Dougherty: May I ask one or two further questions, your Honor?



(Testimony of Robert R. Rand.)

Further Cross-Examination

By Mr. Dougherty:

Q. Mr. Rand, of course this was a corporation, but you mentioned when Mr. Markee became one of the partners.

A. Well, I meant a stockholder in the corporation. I wish to correct that.

Q. But, in fact, in your operations did you conduct it as a——

Mr. Bollenback (Interrupting): I object to that, your Honor. That isn't proper. It was, in fact, a corporation, and if they conducted it as a partnership it just meant it wasn't operated properly.

Mr. Dougherty: That is a conclusion. I think that the circumstances of how the business was conducted and how it was considered by the owners is of considerable importance.

The Referee: Who was the stockholder you were referring to?

Mr. Dougherty: Mr. Rand, I believe, testified that Mr. Markee [22] acquired an interest, and just as a manner of speaking, I believe Mr. Rand said "when he became one of the partners."

The Referee: How long had he been in there before you sold out.

A. About twenty-three years.

The Referee: Markee had?

A. No, no, no. No, Markee had——

(Testimony of Robert R. Rand.)

The Referee: Well, how long had Markee been in there before you sold out?

A. I couldn't say; just a matter of months.

The Referee: Well, if you want an answer he may answer.

Q. (By Mr. Dougherty): Did you run your business, Mr. Rand, generally as any closely held business is run?

Mr. Bollenback: Oh, if your Honor please, that is a different question entirely. That isn't the question he asked. That is calling for a conclusion and calling for everything else. How does this witness know how "any closely held business is run?"

The Referee: Well, I don't think it is going to be very relevant, one way or the other. Mr. Markee had been in only a few months, and before that, as I understand, Mr. Rand and his sister-in-law were the sole owners of the corporation, is that right?

A. Well, Mrs. Rand, myself and Mrs. Potts held all of the stock.

The Referee: Was she your sister-in-law, Mrs. Potts—did I understand that correctly? [23]

A. She was the wife of a former partner, when I operated it as a partnership, and he died and she inherited his interest in the truck line.

The Referee: I got the impression she was a relative of yours. Am I mistaken?

A. Yes, that's right. It was all in the family.

The Referee: Mr. Dougherty, you had better repeat your question if you want it answered.

(Testimony of Robert R. Rand.)

Mr. Dougherty: Let me ask another question, if I may.

Q. When you sold out, Mr. Rand, did you consider that you were selling out all of the assets of the business? Were you selling the business as a whole to the Markees?

A. I was selling the entire stock in the corporation, which would include all the assets.

The Referee: You held the stock until you got all of your money, didn't you?

A. Yes, I did.

Mr. Bollenback: Are you through, your Honor?

Mr. Rand, since you have been on the stand we have been in touch with Mrs. Rand and she has agreed to come in here this afternoon but she wants you to go out and pick her up. Will you do that and be down here for this afternoon's hearing? I thought that you knew all about this transaction. Of course, technically it is her signature, so as I say, we have asked her to come down, and will you go and pick her up? [24]

Mr. Rand: Well, if the Court would request me and would feel that it was absolutely necessary I would say I would, but I would rather not because Mrs. Rand isn't well. She has high blood pressure and she isn't in a condition to appear here for questioning, but if it is absolutely compulsory it could be done. I don't think—well, it is not my opinion at all. I am speaking out of turn.

Mr. Bollenback: No, you aren't speaking out of turn, because our situation is this, Mr. Rand. As I say, I felt you knew about this transaction and

(Testimony of Robert R. Rand.)

you say now you didn't, and it is her signature and of course, if we are forced to we can subpoena her as we did you.

Mr. Rand: I have already made my statement. If the Court feels it is necessary that she be brought in as a witness, I will.

Mr. Dougherty: If the Court please, the document shows on its face that it was issued to Mrs. Rand, and Mrs. Rand signed it, and counsel has assumed that Mr. Rand might know about it. He had no basis for that assumption. The matter has been going on for some seven years. He has had adequate time to prepare it. I don't know that it is of any particular materiality to Mr. Heider, but I don't see why last-minute subpoenas should be issued in the middle of the examination.

The Referee: This note was made to Mrs. Rand. Was the mortgage made to Mrs. Rand?

Mr. Bollenback: Your Honor, it is apparent on the face of it [25] that this document originally was prepared to be given to Mr. Rand, and you will note particularly on the first mortgage, the title "Mrs." is inserted. You can see on the front page of the mortgage, toward the top, there is even a diagonal bar put in and the "Mrs." inserted, so the transaction was, in fact, supposed to be one with Mr. Rand, but——

The Referee: Well, who assigned the mortgage to Mr. Heider?

Mr. Bollenback: Well, the note is assigned by Mrs. Rand, so I assume she did.

(Testimony of Robert R. Rand.)

The Referee: I thought we might hurry it up if Mr. Rand may have joined in the assignment of the mortgage. It was assigned, wasn't it, Mr. Dougherty?

Mr. Dougherty: Yes, sir.

The Referee: Well, this Exhibit 6, previously received—was that the original mortgage?

Mr. Bollenback: I think that is a copy, your Honor. Well, that is the first mortgage. It might be a duplicate original.

The Referee: Couldn't we have the original mortgage introduced in evidence? To support Mr. Heider's claim it should be in.

Mr. Bollenback: Technically his claim is on the second mortgage, your Honor, but the first mortgage is directly involved because it was never paid in full.

Mr. Miller: Mark these Trustee's Exhibits 14 and 15.

(Thereupon, a sheaf of papers headed "Schedule 100. Comparative Balance Sheet Statement" was marked [26] for identification Trustee's Exhibit No. 14. A certified photostatic copy of the Articles of Incorporation of Rand Truck Line, Inc. was marked for identification Trustee's Exhibit No. 15.)

The Referee: Do you think it is attached to the claim, Mr. Heider?

Mr. Heider: I thought it was attached to the claim, your Honor.



(Testimony of Robert R. Rand.)

Mr. Bollenback: I think that is the second mortgage that is attached to the claim, your Honor. Claim No. 63. It is filed numerically.

Well, Mr. Rand, getting back to the presence of Mrs. Rand here, unless you agree to have her present in court this afternoon it will be necessary for us to cause a subpoena to be issued.

Mr. Rand: Well, I wouldn't be a party to making that necessary. I will co-operate as far as I can.

Mr. Bollenback: Will you agree to have her here? We will try to not upset her, but will you agree to have her here at the commencement of the afternoon hearing?

Mr. Rand: Uh huh.

Mr. Dougherty: We renew our objections, your Honor.

The Referee: Objections to what?

Mr. Dougherty: Objection to calling the witness at this late date. There is a perfectly orderly procedure for subpoenaing [27] witnesses, and when the documentary evidence is as clear as it is here there is no reason for the witness not being called in long ago.

Mr. Bollenback: I am sure Mr. Dougherty objects to this entire transaction.

You are excused, Mr. Rand. Take a seat over here.

(Witness excused.)

Mr. Bollenback: At this time, your Honor, I would like to offer into evidence Trustee's Exhibit

14 for identification, which appears to be photostatic copies of balance sheets of the corporation filed with the Public Utilities Commission of the State of Oregon for the years 1944, '45, '46, '47 and '48.

Mr. Dougherty: We have no objection to Trustee's Exhibit No. 14 being received, subject to this comment: These documents are not, I believe, self-explanatory. Accordingly, we are willing to agree that they are photostatic copies of the balance sheets which were filed; whether or not they are correct, whether or not they were self-explanatory, we doubt. I would invite the Court's attention to the fact, however, that they show an excess of current assets over current liabilities for the time here involved.

Mr. Bollenback: The only comment I have on that is that the record already in evidence on that transaction was that this mortgage involved was never set up on the books, for about three years. [28]

The Referee: It may be received.

Mr. Bollenback: Now at this time I wish to offer Trustee's Exhibit 15 for identification, which purports to be a photostatic copy obtained from the Corporation Commissioner of the Articles of Incorporation of the Rand Truck Line.

Mr. Dougherty: No objection.

The Referee: It may be received.

(Thereupon, the documents heretofore marked Trustee's Exhibit No. 14 and Trustee's Exhibit

No. 15, respectively were marked as received in evidence.)

Mr. Bollenback: Call Vern Markee.

The Referee: Your name is Vern Markee?

Vern Markee: Yes, sir.

### VERN MARKEE

was thereupon produced as a witness in behalf of the Trustee and, being first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Bollenback:

Q. Mr. Markee, it is a fact, is it not, that on or about December 27, 1943 you bought 500 shares of corporate stock of the Rand Truck Line, and in return for that you turned in certain equipment that you had owned? Is that right. A. Yes.

Q. And subsequently during the year 1945 you negotiated for the outstanding stock which was held by Mrs. Potts and the Rands, is that correct?

A. Yes, that's right. [29]

The Referee: Is that '45 or '44?

Mr. Bollenback: Pardon me. It was '44, wasn't it? A. Yes.

Q. And did you agree to pay the Rands \$40,000 for that stock, is that correct? A. Yes.

Q. How were you going to pay for that stock? (Pause.) Let me rephrase my question. When did you first talk to Mr. Heider about this deal?

(Testimony of Vern Markee.)

A. After we had made arrangements with Bob Rand to buy out his interest.

Q. Buy his stock? A. Yes.

Q. It was before the deal was closed?

A. Yes.

Q. And was Heider going to furnish the money to pay for the stock? A. Yes.

Q. And did Mr. Heider know what the transaction was—that it was a purchase of the corporate stock from Rand? A. I believe so, yes.

Q. Well, you explained the deal to him when you went down there, didn't you?

A. Yes, I told him we were buying the stock.

Q. Now Loren Markee, your brother, did furnish \$5,000 of the money, didn't he? [30]

A. That's right.

Q. Mr. Rand has testified that he got \$8,000 at the time the deal was closed. Where did the other three come from?

A. As to that, I can't say. I don't know.

Q. Did you furnish it? A. No, sir.

Q. You didn't put any money up at that time, did you? A. No.

Q. And who else would be interestd in putting money up beside you and Loren? A. No one.

Q. Well, did Otto Heider put this three thousand up? A. I don't know.

Q. Did the corporation pay any money to Bob Rand and Potts? A. No, not that I know of.

Q. Now the payments that were made on this first mortgage, those payments were made from cor-

(Testimony of Vern Markee.)

porate funds, were they not?           A. Yes.

Q. A part of which went through the books of the corporation and part did not, is that correct?

A. That's right.

Q. Part of which was paid to Mr. Heider by cash and part by corporate check, is that right?

A. That's right.

Q. Was Otto Heider ever your attorney? Did he ever handle any [31] legal work for you?

A. Not that I know of.

Q. Now, Mr. Markee, going to a different field, I have a note and mortgage here—I thought it was marked but it isn't—a mortgage from you to the Rand Truck Line, in the amount of \$5,000—for \$5,400, rather, and covering a wood van body with a 3-speed Brownie with 5 speeds. Do you know what that piece of equipment was? (Pause) And a note payable to the Rand Truck Line, signed by you, which was endorsed. Do you remember that transaction? That was turned over to Otto Heider?

Mr. Dougherty: May I inquire who is doing the testifying here?

Mr. Bollenback: You may inquire.

Mr. Dougherty: Three questions have been asked the witness and he hasn't been given an opportunity to answer any of them.

A. This particular piece of equipment is a Sterling truck and van body used by the Rand Truck Lines, but I don't follow exactly what happened here.

Q. (By Mr. Bollenback): Well, I am going to



(Testimony of Vern Markee.)

ask you to remember at that time whether or not you borrowed any money from Otto Heider?

A. Yes.

Q. And do you remember how much you borrowed from him?

A. According to this note it was \$5,400.

Mr. Bollenback: I think probably that should be marked. I [32] thought it was marked at a previous hearing, but apparently it wasn't.

Q. I am going to hand you a check for \$5,000, payable to Vern Markee and Rand Truck Line, dated November 2, 1945, and ask you whether that is what you received for that mortgage?

A. Yes, that is the check we received.

Mr. Dougherty: Your Honor, I fail to see any relevancy here at all.

The Referee: What is the date of those instruments?

Mr. Dougherty: This is November 2, 1945.

Mr. Bollenback: The note is in October and the check is in November.

Mr. Dougherty: Yes. I thought they were talking about a transaction which occurred in August of '46.

The Referee: I think we had better clear up the original transactions by having the original mortgage of 1944. The original mortgage of 1946 is attached to Mr. Heider's claim.

Mr. Bollenback: Do you, your Honor, want an explanation of what I have in mind at this time?

The Referee: All right.

(Testimony of Vern Markee.)

Mr. Bollenback: And it is a matter which I think Mr. Heider is going to be bound to prove.

At the hearing that we had, Mr. Heider produced checks totaling \$36,500, which includes this \$5,000 check and it was his claim at that time that these checks represented the money [33] that he paid out on this first mortgage. At this stage of the proceeding we have Mr. Rand, who says he got \$3,000 which nobody knows where it came from, and we also have testimony by Mr. Markee that this \$5,000 check that is claimed to be part of the consideration for the first mortgage is, in fact, a consideration for one of these subordinate mortgages which were paid off by the second mortgage, so we find Mr. Heider here who has only produced \$31,500 worth of checks for a \$43,000 mortgage.

The Referee: Well, you have those marked.

Mr. Bollenback: Very well. The check itself——

The Referee: Has it been marked?

Mr. Bollenback: It hasn't been marked, your Honor.

Mr. Dougherty: If the Court please, of course by remaining silent we don't agree to counsel's misstatement of the record. The statement was that cash and checks were delivered.

The Referee: Do you mean formerly?

Mr. Dougherty: Yes, sir.

(Thereupon, a check dated November 2, 1945, drawn on The First National Bank of Sheridan, in favor of Vern Markee and Rand Truck Line,

(Testimony of Vern Markee.)

in the amount of \$5,000, signed by Otto W. Heider, was marked for identification Trustee's Exhibit No. 16.

A promissory note in the amount of \$5,400, dated at Sheridan, Oregon, October 31, 1945, in favor of Rand Truck Line, signed by Vern Markee, attached to [34] a chattel mortgage of even date and amount, in favor of Rand Truck Line, signed by Vern Markee, was marked for identification Trustee's Exhibit No. 17.)

Mr. Bollenback: At this time, your Honor, Trustee's Exhibit 16 is the \$5,000 check referred to; Trustee's Exhibit 17 is the note and mortgage which were just referred to.

The Referee: You are offering them now?

Mr. Bollenback: I am offering them in evidence.

Mr. Dougherty: We have no objection to the exhibits being received.

The Referee: They may be received.

(Thereupon, the check heretofore marked Trustee's Exhibit No. 16, and the note and mortgage heretofore marked Trustee's Exhibit No. 17 were marked as received in evidence.)

Mr. Bollenback: Now, if the Court please, may we offer in evidence at this time not only the Heider testimony at the previous hearing, but also the testimony of Vern Markee, which was given July 6, 1949? It is all bound in the same transcript and we

(Testimony of Vern Markee.)

feel that that should be part of the evidence in this case too.

Mr. Dougherty: I am sorry, your Honor. We will have to object. It relates to matters not germane to this controversy, in a large part. Mr. Markee is in court. [35]

Mr. Bollenback: We will accept the modification that it will be considered as evidence only insofar as it would be relevant.

Mr. Dougherty: I haven't examined it, your Honor, and I am not prepared blindly to stipulate that it may be received, and I do believe that it is subject to an objection for relevancy.

Mr. Bollenback: I have no further questions, Mr. Markee.

### Cross-Examination

By Mr. Dougherty:

Q. Mr. Markee, when you went into Rand Truck Line, was it a solvent company, operating on a cash basis? A. At the time I went in?

Q. Yes. A. Yes, I am sure it was.

Q. And at the time of these various transactions with Mr. Heider was it a good, going business, operating on a cash basis?

A. Which transactions are you referring to now?

Q. Well, for example, when this money was borrowed and there was a Rand Truck Line mortgage assigned to Mr. Heider.

A. The first mortgage or second mortgage?

Q. First mortgage. A. Yes, it was.

(Testimony of Vern Markee.)

Q. Did you ever discuss the internal affairs of the corporation with Mr. Heider?

A. No, sir, I didn't believe I did.

Q. Do you think that any of the other stockholders or officers, [36] or do you know whether or not any of the stockholders or officers discussed the internal affairs of the corporation with Mr. Heider?

A. I can't speak for the other stockholders.

Q. To your knowledge did any of the others ever discuss the internal affairs with him?

A. I can't say; I am sorry. They might have.

Q. They might have, but do you know of any occasion when they did? Do you know of any time when they did?

A. I wouldn't know of any particular time but they probably did discuss it with Mr. Heider.

Q. You did not do so?           A. No.

Q. It is a fact that there were various financial transactions through Mr. Heider's office?

A. Yes.

Mr. Dougherty: I have no further questions.

Mr. Bollenback: Will the reporter read the last question, please?

(The last question was read.)

The Referee: Did the corporation have any difficulty in meeting these payments of a thousand dollars every month throughout that whole time?

A. Yes, sir.

The Referee: Did you have to refinance in '46?

A. Yes, sir. I am not sure of the date, sir, but we did. [37]



(Testimony of Vern Markee.)

The Referee: That is what you call the second mortgage?

A. I think so.

The Referee: Why did you have to refinance at that time? Were you having difficulties?

A. Yes. I would have to look over the details at the time to remember exactly what happened, but we were having troubles at that time.

The Referee: Didn't you buy some additional equipment at that time, or did you, at the time of the second mortgage?

A. I can't say for sure.

### Redirect Examination

By Mr. Bollenback:

Q. Well, Mr. Markee, actually you had to borrow money from Mr. Heider practically immediately, didn't you? Not only did you have that mortgage that we were talking about awhile ago, but I will hand you Trustee's Exhibit 4, which was a mortgage that was signed in 1946. That was another occasion where you got some money from Mr. Heider, wasn't it?

Mr. Dougherty: May the record show that the note that has been handed the witness is signed by Rand Truck Line and that Mr. Markee's name nor signature appears on it.

Do I understand counsel that when you say "you" you meant Rand Truck Line?

(Testimony of Vern Markee.)

Mr. Bollenback: I meant Rand Truck Line. They were in financial difficulties. [38]

A. This note and mortgage was signed by H. H. Macy, at that time general manager, and I did know of it but I didn't participate in this particular note myself.

Q. Now I am going to hand you——

The Referee: Just a minute. You will have to dispose of these matters. You referred to an exhibit. Is it understood that all of the exhibits under the former record are to be introduced in evidence?

Mr. Bollenback: It is my understanding that that was what the stipulation was.

Mr. Dougherty: I understood we had a stipulation concerning Mr. Heider's prior testimony. We have no objection to any exhibits being received which were previously received and which relate to Mr. Heider in any way. In view of the fact that this particular instrument is payable to the order of Earl Walden and relates to the purchase of a Ford van, and is not negotiated to Mr. Heider, and was not assigned to him, at the moment I don't see any connection with Mr. Heider. There may be.

Mr. Bollenback: Mr. Dougherty, if you will refer to the mortgage you will find that Mr. Heider was made an alternate payee.

Mr. Dougherty: It says, “\* \* \* whereas Rand Truck Line, by H. H. Macy, Gen. Mgr. \* \* \* has purchased from Earl Walden or Otto W. Heider \* \* \*” a certain Ford van for a price of \$1,080.00. Well,

(Testimony of Vern Markee.)

there is that connection, for whatever it may be worth.

The Referee: It may be received. [39]

(Thereupon, the note and mortgage hereinbefore described, previously marked Trustee's Exhibit 4 in the former hearing, was marked as received in evidence.)

Mr. Bollenback: Will you mark this?

(Thereupon, a document entitled "Conditional Sales Contract," executed by Rand Truck Line, Vern Markee, dated April 9, 1946, and covering one 1945 Fruehauf van semi-trailer, with a promissory note in the amount of \$2,700.00, of even date and like signature, in favor of Otto W. Heider attached as a part thereof, was marked for identification Trustee's Exhibit No. 18.)

Q. (By Mr. Bollenback): Now, Mr. Markee, I hand you Trustee's Exhibit 18 for identification, which purports to be a conditional sales contract, with a note attached, signed by Rand Truck Line, payable to Otto W. Heider, dated April 9, 1946, and ask you whether or not that isn't also a part of the financing that the Rand Truck Line was forced to do?

A. Yes, this was purchase of additional equipment to be used in the operation.

Mr. Dougherty: No objection.

(Testimony of Vern Markee.)

The Referee. Was that purchased from Mr. Heider?

A. No, sir, I think it was from Fruehauf Trailers, in Portland.

The Referee: It may be received.

(Thereupon, the document hereinbefore marked Trustee's [40] Exhibit 18 was marked as received in evidence.)

Mr. Bollenback: I have nothing further at this time.

#### Recross-Examination

By Mr. Dougherty:

Q. Mr. Markee, when did you suffer your large fire loss?

A. Either '46 or '48; I am not sure as to the date.

Q. Was it that unexpected fire loss which was the immediate cause of the financial difficulties of the corporation?

Mr. Bollenback: Object to that as calling for a conclusion.

The Referee: Overruled.

A. Well, I can't say as to how much damage it did but it was quite a drain on the operation of the truck line, yes.

Q. Some of these other financing arrangements where Rand Truck Line bought equipment and borrowed money from Mr. Heider to buy the equipment and gave him a chattel mortgage, or possibly even

(Testimony of Vern Markee.)

bought equipment from him on a conditional sales contract, were there several of those transactions?

A. Yes, during the number of years there was.

Q. And were some of those prior conditional sales contracts or chattel mortgages and the obligations evidenced by them included in what we refer to as the second mortgage?

A. I can't answer to that; I don't know. If I did answer I would be just guessing.

Mr. Dougherty: No further inquiries. [41]

#### Further Redirect Examination

By Mr. Bollenback:

Q. Mr. Markee, were those fire loss claims ever paid?

A. I can't answer that either, because I didn't have anything to do with it.

Q. Well, I think your fire occurred in 1946, didn't it? A. Somewheres around there, yes.

Mr. Bollenback: I wonder if I might have Claim No. 2, your Honor?

Mark this, please.

(Thereupon, a document headed "Proof of Claim in Bankruptcy," signed by Gladys Aljovin on behalf of Better Products Co., together with supporting documents attached, was marked for identification Trustee's Exhibit No. 19.)

Mr. Bollenback: At this time I would like to offer in evidence Trustee's Exhibit No. 19, which



purports to be a claim filed herein by Better Products Co., resulting from a loss from fire in the terminal in McMinnville, supported by a bill of lading dated July 15, 1946, and also supported by a letter signed by Beryl B. Taylor, President of the Rand Truck Line, Inc., dated April 1, 1948, in which they acknowledge the indebtedness of \$53.00 growing out of the fire in McMinnville on July 18, 1946.

The Referee: The purpose of the offer?

Mr. Bollenback: The purpose of the offer is not only to establish a creditor that has existed up to the present time, [42] from that date, but also to fix the date of the fire.

Mr. Dougherty: If the Court please, the offered exhibit is in this connection purely hearsay. Now if the witness can refresh his recollection from this, or something, we have no objection to that.

The Referee: I think it may be received. When those proofs of claim import validity on their face they are admissible in evidence as prima facie evidence of the claim itself, and it has just been put in for two purposes, so I will overrule the objection. It may be received.

(Thereupon, the document heretofore marked Trustee's Exhibit No. 19 was marked as received in evidence.)

Mr. Bollenback: We have nothing further of Mr. Markee.

Mr. Dougherty: No further inquiries.

(Witness excused.)

Mr. Bollenback: Your Honor, we have Mrs. Rand coming in this afternoon, and also one other witness who will be very short, and we have nothing further to occupy the morning with. We think we have made a prima facie case but we do want to reserve the right to call the witnesses.

The Referee: What is your pleasure, Mr. Dougherty? Would you like to adjourn now until two and consider this matter, or would you like to proceed with any evidence you want to introduce?

Mr. Dougherty: If the Court please, we do not wish to proceed at this time, primarily because we feel that nothing approaching [43] a prima facie case has been made.

We would like at this time to be sure, in line with the Court's prior comments, that the proper documents are in evidence with respect to the Proof of Claim.

I have here what purports to be a recorded mortgage from Rand Truck Line to H. H. Macy, bearing the County Clerk's stamp.

The Referee: What is the date of that?

Mr. Dougherty: It is dated August 7, 1946.

Mr. Miller: Is there a file number on that, Mr. Dougherty?

Mr. Dougherty: It is Volume 107, page 676 of the Mortgage Records of Yamhill County.

The Referee: I would like to have that added as an exhibit in support of your claim, because the claim has been questioned and I would like to have you support it by the documents. He did attach to

his Proof of Secured Claim what seems to be a duplicate original, but not the recorded one.

Mr. Dougherty: May we so offer it now?

The Referee: Yes.

Will you mark that exhibit?

(Thereupon, the mortgage hereinabove described was marked for identification as Claimant's Exhibit No. 20.)

Mr. Dougherty: Has this been received, your Honor?

The Referee: It may be received, yes. [44]

(Thereupon, the document heretofore marked Claimant's Exhibit No. 20 was marked as received in evidence.)

Mr. Dougherty: May I inquire whether or not the assignment appears with the Proof of Claim?

The Referee: Suppose you look at it.

Mr. Dougherty: If the Court please, the assignment does not seem to be attached to the claim. May I inquire of counsel whether or not any objection is made? Well, as a matter of fact we know it isn't because it isn't in the objections to the Proof of Claim. No objection is taken on that ground. I would like to have an opportunity to attach it to the original.

The Referee: Could we have the original mortgage in 1944, because I think this is a renewal of at least part of the mortgage of '44.

Mr. Heider: I didn't know the old mortgage was involved and I kind of doubt if I brought it along.

The Referee: You did introduce at the former hearing a copy of it.

Mr. Heider: You say a copy was introduced?

The Referee: A copy was introduced.

Mr. Heider: Then I think the original mortgage of 1944 has been returned to Rand Truck Line and would not be in our possession.

The Referee: Do you have the original mortgage?

Mr. Bollenback: The only one I have, your Honor, is the one put in evidence here, which apparently was a signed copy, all [45] right. There is no filing on it.

Mr. Heider: If it was recorded I could get a certified copy of it and have it sent down.

The Referee: That would suffice. Do they photostat now?

Mr. Heider: Oh, yes, they photostat. I would be very glad to.

Mr. Miller: Mr. Dougherty, I have examined Claimant's Exhibit No. 20 and I wonder if you could answer some questions. It contains both real and personal property and it states on its back that it is recorded in Book 107, page 676, Record of Mortgages of said county. I would like to ask if you know, was that recorded in the real property mortgages or in the personal property mortgages?

Mr. Dougherty: It is cross-indexed as the statute provides.

Mr. Miller: They usually say so on the mortgage. I find no such statement here is why I am asking.

Mr. Dougherty: I don't believe they do so in Yamhill County, however.

Mr. Miller: Then I would like to ask Mr. Heider unofficially if he knows, was this particular mortgage the mortgage of August 7, 1946, recorded in Multnomah or any other county except Yamhill?

Mr. Heider: No, except the Register of Migratory Chattels in the Secretary of State's office.

Mr. Miller: Was that a filing of the entire mortgage in the Migratory Chattels records, or just the vehicles?

Mr. Heider: No, just the vehicles record was made in Salem. [46]

Mr. Miller: Can you answer me about the first mortgage now? There seemed to be some doubt at the first meeting about this.

Mr. Heider: I think the same filing on that was made as on this in Yamhill County, and I can get a certified copy of it.

The Referee: He has agreed to get us a certified photostatic copy of that mortgage.

Mr. Heider: It will have the filings on it.

The Referee: Well, it is nearly ten minutes till twelve. We will adjourn this hearing, to reconvene at two o'clock. The witnesses under subpoena will please return at two o'clock.

(Noon recess.) [47]

Afternoon Session, 2:00 P.M.

The Referee: You may proceed.

Mr. Bollenback: I will call Mr. Ellis, please.



DEAN ELLIS

was thereupon produced as a witness in behalf of the Trustee and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Miller:

Q. What is your occupation, Mr. Ellis?

A. I am a lawyer.

Q. And how do you practice law? Are you in a partnership?

A. I am in a partnership with my father, William P. Ellis.

Q. Now did the partnership represent, at any time, Rand Truck Line?           A. Yes, it did.

Q. Is Rand Truck Line indebted to the partnership?           A. Yes, it is.

Q. Have you a statement of the indebtedness of Rand Truck Line to the partnership of Ellis & Ellis?           A. Yes, I have.

Q. May we have it, please?

We will ask that this document be marked for identification as Trustee's Exhibit 21.

(Thereupon, a statement of Ellis & Ellis to Rand Truck [48] Lines, Inc., dated July 8, 1949, was marked for identification Trustee's Exhibit No. 21.)

Q. Now is the sum shown here——

Mr. Dougherty: We object to it, your Honor, because no relevancy with respect to the instant proceeding has been shown.

(Testimony of Dean Ellis.)

Mr. Miller: I haven't offered it yet.

Mr. Dougherty: Well, don't ask him any questions about it until you do, please.

Mr. Miller: That is my privilege.

Q. This sum shown on it, \$1,099.67, is still unpaid, is it?

Mr. Dougherty: Objected to.

The Referee: He may answer.

A. It hasn't been paid.

Q. (By Mr. Miller): And did Ellis & Ellis file a claim in this proceeding?

A. Yes, they did.

Mr. Miller: I will offer it.

Mr. Dougherty: Objected to on the ground that it is irrelevant with respect to the claim of Otto W. Heider, which we understood was the matter being considered today.

Mr. Miller: Well, the matter is to show, your Honor, that there was a creditor who had rights under the Oregon law against this mortgage.

The Referee: When did you say it was performed?

Mr. Miller: That is stated on the face of it. I haven't [49] finished with the witness yet.

The Referee: All right.

Q. William P. Ellis was engaged in the practice of law as an individual prior to the formation of this partnership?

A. That is correct.

Q. And are the books and records of William P. Ellis in the office which you now occupy?

A. Yes.

(Testimony of Dean Ellis.)

Q. Are you familiar with the books and records of William P. Ellis? A. I am.

Q. Do they show an indebtedness from Rand Truck Line to William P. Ellis? A. Yes.

Q. And is that a copy of the indebtedness there?

A. That is a copy of the indebtedness.

Mr. Miller: We will ask that this be marked Trustee's next exhibit.

(Thereupon, a statement of Wm. P. Ellis, Individual, to Rand Truck Lines, Inc., dated July 8, 1949, was marked for identification Trustee's Exhibit No. 22.)

Q. And to your knowledge is this indebtedness on Trustee's Exhibit 22, \$1,686.00, still unpaid?

A. It has not been paid.

Mr. Miller: We will offer Trustee's Exhibits Nos. 21 and 22, [50] your Honor, two pages, to show the existence of a creditor from '46 prior to the existence of the mortgage, right on through.

Mr. Dougherty: Objected to on the ground of relevancy and because the documents do not show or purport to show what counsel has stated for them. They show accounts and indebtedness as of July 8, 1949, subsequent to the mortgages.

Mr. Miller: If the Court please, counsel is not reading from the documents. He is summarizing. May I see the document, please? Part of the services were rendered August 1, 1946, according to the document.

Mr. Dougherty. There is an item for services

(Testimony of Dean Ellis.)

rendered between August 1, 1946, and August 1, 1948, which is some time subsequent to the priority claim here.

Mr. Miller: If the Court please, the interpretation of the document is for the Court. We are offering the documents into evidence with the Court's right, of course, to interpret them as the Court sees fit.

The Referee: You had this witness testify what services were performed?

Mr. Miller: Not that early, your Honor. His father, Mr. Ellis Sr., is out of town.

The Referee: I am going to overrule the objection at this time. They will be received subject to the objection of counsel.

(Thereupon, the documents heretofore marked Trustee's Exhibit No. 21 and Trustee's Exhibit No. 22, respectively, [51] were marked as received in evidence.)

Mr. Miller: No further questions.

### Cross-Examination

By Mr. Dougherty:

Q. Was any security received, Mr. Ellis?

A. There was no security for any of the obligation.

Mr. Dougherty: No further inquiries.

Mr. Miller: Thank you very much.

(Witness excused.)

Mr. Bollenback: Call Mrs. Rand, please.

GOLDA I. RAND

was thereupon produced as a witness in behalf of the Trustee and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Bollenback:

Q. Now, Mrs. Rand, prior to September 28, 1944, were you a stockholder in the Rand Truck Line?

A. Forty-what?

Q. Forty-four. A. I presume so.

Q. Well, just so it won't confuse you, that was the date, I think, of the transaction in which Vern Markee and his wife and Loren Markee acquired your stock in the Rand Truck Line. Did you have any part in the negotiations going on for the sale of your [52] stock? A. No.

Q. Mr. Rand handled it, is that right?

A. That's right.

Q. The note and mortgage which were given at that time, Mrs. Rand, Trustee's Exhibits 3 and 6, show that that note and mortgage were payable to you. Now was there any discussion with you before that note and mortgage were executed as to your being made payee of that mortgage?

A. No, sir.

Q. You didn't know anything about the transaction?

A. Well, I knew that we were selling out but I didn't have any part in it that I remember of.



(Testimony of Golda I. Rand.)

Q. Your husband said this morning that he thought he was hunting at the time the transaction was closed.      A. That's right.

Q. Now is that your signature on the back of that note?      A. Yes, it is.

Q. Do you remember where you were when you signed that endorsement?

A. In Mr. Heider's office.

Q. Was there any discussion at that time as to why those typewritten words were above your signature?

A. So far as I am concerned I was asked to go up there and sign whatever papers were necessary to close the deal and I went up and signed them and I never read the note and I don't know anything [53] about it.

Q. The papers were there before you went there, is that right?      A. Yes.

Q. You didn't take them with you?      A. No.

Q. They were in his office when you got there?

A. I am sure they were.

Q. Leastwise you didn't take them there?

A. No.

Q. And Mr. Heider just put some papers in front of you and asked you to sign them, is that what happened?

A. That must have been what it was, and I trusted him.

Q. Now, Mrs. Rand, did the corporation receive anything for that note and mortgage that it gave you?      A. Do you mean before this was signed?

(Testimony of Golda I. Rand.)

Q. No, those papers in front of you, that note and mortgage, are an agreement on the part of the Rand Truck Line to pay you \$43,560, if I have the figures correct. Now, that is what those documents represent. Did you give the Rand Truck Line anything for that note and mortgage? A. Did I?

Q. Yes. A. No, sir.

Q. Do you know if anyone else gave the Rand Truck Line anything for that note and [54] mortgage?

A. Well, who do you mean, anybody else?

Q. Well, you were, up to that time, a stockholder of the corporation, and the corporation executed a note and mortgage for forty-three thousand, five hundred and some odd dollars. Now what did the corporation get in return for that note and mortgage?

A. Well, they got the full payment, as far as I know.

Q. You mean that the money was paid to the corporation? A. Well, it must have been.

Q. Wasn't the money paid to you and Mr. Rand?

A. Well, there was just three in the corporation, my sister-in-law, and Mr. Rand, and myself.

Q. And you three are the ones that got the money, isn't that right?

A. That's right.

Q. And that mortgage was drawn so that Mr. Heider or the Markees would pay you some money in payment of your stock in the corporation; that

(Testimony of Golda I. Rand.)

is what it was, wasn't it?      A. That's true.

Q. And the corporation itself, as distinguished from the stockholders, didn't get anything, did it?

A. That I don't know.

Q. Now who asked you to go to Mr. Heider's office?      A. Mr. Rand.

Q. Mr. Rand. Was the time set for the appointment for you to go or were you supposed to wait until Mr. Heider notified you, or what? [55]

A. That I don't remember. It is a long time ago.

Q. Did you get some money at the time you signed these papers?      A. No, sir.

Q. You just went in and signed them and turned around and walked out?      A. That's right.

Mr. Bollenback: You may inquire.

### Cross-Examination

By Mr. Dougherty:

Q. When you sold out the business and signed these papers, Mrs. Rand, it was a good, going business, wasn't it?      A. Well, yes.

Q. And when you sold it you sold it clean? I mean any bills had been paid except whatever might be quite current, is that right?

A. I don't remember that.

Q. So far as you recall, the company, when you sold it, wasn't indebted at all?

A. I don't think so.

Q. And was it your understanding that you were selling the company and all of its assets?

(Testimony of Golda I. Rand.)

A. I can't answer you that.

Q. This has been how many years ago?

A. Twelve years.

Mr. Dougherty: No further inquiries. [56]

Redirect Examination

By Mr. Bollenback:

Q. You did know, didn't you, Mrs. Rand, that what you were selling was the capital stock in the corporation?

A. I wasn't too familiar with it.

Q. You let your husband take care of that?

A. That's right.

Q. I may be repeating myself, but just to be sure, you didn't yourself personally, pay anything to this corporation when it executed this mortgage in your favor, did you?      A. No.

Mr. Bollenback: I think that is all.

The Referee: Thank you. May Mrs. Rand be excused now?

Mr. Bollenback: I think so, your Honor, and thank you for coming down, Mrs. Rand.

The Referee: And how about Mr. Rand?

Mr. Bollenback: So far as we are concerned you may go, Mr. Rand. Thank you.

The Referee: You are welcome to stay, though.

(Witness excused.)

Mr. Miller: If the Court please, the Trustee offers into evidence the schedules of Rand Truck

(Testimony of Golda I. Rand.)

Line, an Oregon corporation. If necessary we can get Mr. Taylor to identify the signatures.

(Thereupon, a document entitled "Statement of Affairs" [57] and pertaining to Rand Truck Line, Inc., was marked for identification as Trustee's Exhibit No. 23.)

Mr. Dougherty: May I inquire, are the schedules being offered as evidence of the truth of any matters stated in the schedules?

Mr. Miller: The statement of assets and liabilities of the corporation as of the date of bankruptcy—that is, the corporation's statement of it. It is rebuttable, of course.

Mr. Dougherty: We have no objection to the schedules being considered as the statement of the person who prepared them, no.

The Referee: They may be received.

(Thereupon, the document heretofore marked Trustee's Exhibit No. 23 was marked as received in evidence.)

Mr. Miller: If the Court please, the Trustee offers into evidence the claims filed here by creditors, numbers 1 to 114, inclusive.

The Referee: As one exhibit?

Mr. Miller: As one exhibit. I might state, your Honor, that I believe Claim 2 is already in evidence, but we will just offer the entire group as one exhibit.

The Referee: Any objection?



Mr. Dougherty: Your Honor, we cannot admit the truth of any matters stated in the claims. We can admit claims have been made under these circumstances and in certain amounts.

The Referee: They are all made under oath of the claimants. They may be received. I am not sure in my mind what relevancy [58] they may have, but I think I should have them in evidence if the briefs of the law indicate that they are matters that should be considered.

Mr. Bollenback: That will be Trustee's Exhibit 24, the claims.

The Referee: Well, you just mark the outside of the file.

(Thereupon, the file containing the above-described claims was marked as received in evidence as Trustee's Exhibit No. 24.)

Mr. Bollenback: Will you mark these?

(Thereupon, a packet of checks drawn by Otto W. Heider on The First National Bank of Sheridan, Nos. 1 to 63 inclusive being in the amount of \$500.00 each, drawn in favor of R. R. Rand and/or Goldie I. Rand, and unnumbered checks to the same payees in the respective sums of \$359.06, \$787.88 and \$33.70, and one check drawn to Rand Truck Line in the sum of \$148.59, by the same payor on the same bank, with adding machine tape attached, was marked for identification as Trustee's Exhibit No. 25.

A packet of 11 receipts signed by Otto W.

Heider and made in favor of Rand Truck Line and in favor of Vern Markee, together with 2 checks drawn on The First National Bank of McMinnville by H. H. Macy in the sum of \$2,500.00 each, one payable to Vern Markee and the other payable to Loren Markee, were [59] marked for identification as Trustee's Exhibit No. 26.

A check drawn on the Douglas County State Bank, Roseburg, Oregon, by Otto W. Heider to Rand Truck Line, in the sum of \$5,000, 2 checks drawn on The First National Bank of Sheridan by Otto W. Heider, one in favor of Rand Truck Line in the sum of \$4,508.00 and the other in favor of Rand Truck Line, Inc., and Transport Bodies & Equipment Co., in the sum of \$3,000, and a charge-your-account slip from the First National Bank, Sheridan, Oregon, to Otto W. Heider, covering a certified check dated August 6, 1946, to Rand Truck Line in the sum of \$5,000.00 were marked for identification as Trustee's Exhibit No. 27. (Adding machine tape attached.)

Mr. Bollenback: At this time I would like to offer into evidence Trustee's Exhibit No. 25 for identification, which is the group of 63 checks of \$500, drawn by Otto Heider, payable to R. R. Rand and/or Golda Rand, together with some other checks by the same drawor and the same payees, bearing notations of interest. There is also one check in here which probably might be irrelevant but I felt it should go in, and that is the check to

Rand Truck Line in the amount of \$148.59. As far as I know, it is for some other transaction, not involved here, but as long as it is Mr. Heider's check and produced here I thought it should go into [60] evidence; either that or be returned to him.

Mr. Dougherty: No objection.

The Referee: It may be received.

(Thereupon, the packet of checks heretofore marked Trustee's Exhibit No. 25 was marked as received in evidence.)

Mr. Bollenback: I shall offer Trustee's Exhibit 26 into evidence, which in fact consists of 11 receipts for various amounts and various dates, signed by Otto Heider. Some of them are made in favor of the Rand Truck Line, some in favor of Vern Markee, and the two checks for \$2500.00 each dated January 12, 1946, signed by H. H. Macy, payable to Vern Markee—one to Vern Markee and one to Loren Markee, both of which checks were endorsed by the payee and bear the subsequent endorsement of Otto Heider.

Mr. Dougherty: No objection.

The Referee: They may be received.

(Thereupon, the packet of receipts and checks heretofore marked Trustee's Exhibit No. 26 was marked as received in evidence.)

Mr. Bollenback: At this time I wish to offer into evidence Trustee's Exhibit 27. The exhibit consists of adding machine tape with items totaling \$36,027.00, with the pen and ink notation immediately

below it, "Plus services," together with a check drawn by Otto Heider on The First National Bank of Sheridan, dated August 14, 1946, payable to the Rand Truck Line for [61] \$4,508.00, together with the check drawn on the Douglas County State Bank of Roseburg, Oregon, by Otto Heider, dated August 7, 1946, payable to Rand Truck Line, in the amount of \$5,000.00; the check on The First National Bank of Sheridan drawn by Otto Heider, payable to the order of Rand Truck Line, Inc., and Transport Bodies & Equipment Co. for \$3,000.00, dated August 7, 1946, bearing on the top of the check a notation, "for title for 1946 Transport Van Trailer," together with a statement of a certified check issued by The First National Bank of Sheridan showing that a certified check dated August 6, 1946, of Otto Heider, payable to Rand Truck Line, in the amount of \$5,000.00 was certified, signed by Frances Papstein, cashier.

It is my understanding that this exhibit shows the claim make-up of the second mortgage.

The Referee: What exhibit is that?

Mr. Bollenback: It is 27, I think, your Honor.

Mr. Dougherty: No objection.

The Referee: It may be received.

(Thereupon, the sheaf of checks and documents heretofore marked Trustee's Exhibit No. 27 was marked as received in evidence.)

The Referee: Any further testimony?

Mr. Miller: We will call the Trustee, Mr. McAllister, please. [62]

S. A. McALLISTER

the Trustee, was thereupon produced as a witness, and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Miller:

Q. I hand you a document headed "Discount on Capital Stock, Account No. 1900." Do you recognize that? A. Yes, sir.

Q. Did it come from the books and records of the bankrupt? A. It did.

Q. It came from the ledger, did it?

A. General ledger, yes.

Mr. Miller: I will ask that this be marked.

(Thereupon, the ledger sheet above described was marked for identification as Trustee's Exhibit No. 28.)

Q. I am handing you Trustee's Exhibit 28 for identification. Just what is that document?

A. It is a journal entry made on July 31, 1944, setting up a total asset of \$20,732.66, of which amount \$12,500.00 is set up as franchise and permits. The balance, \$8,232.66, is set up as good will.

Q. Well, then those two items together make up the item of Discount on Capital Stock?

A. That's right.

Mr. Miller: That is all. [63]

Mr. Miller: We will offer in evidence Trustee's Exhibit 28 for identification, your Honor.

Mr. Dougherty: We object to it on several



(Testimony of S. A. McAllister.)

grounds. First, the Trustee has indicated no personal knowledge of it; secondly, we very strenuously object to morsels and items being torn out of the books of account and offered piecemeal. Thirdly, we object because there is no connection shown and none in evidence concerning any knowledge which this claimant might have had of any such transaction, and in fact, the three dates, any of the transactions between Mr. Heider and the Rand Truck Line, which are involved here. Fourth, that no relevancy has been shown.

Mr. Miller: If the Court please, at the time that the Trustee offered into evidence Trustee's Exhibit No. 14, being the balance sheets of the bankrupt, counsel for the claimant remarked that there were certain things in there that needed explaining. The offered document, Trustee's Exhibit No. 28 for identification, is a ledger sheet which tends to explain one unexplainable item on Trustee's Exhibit No. 14, the item of Discount on Capital Stock. In other words, it is a direct reference from the balance sheet as shown on Trustee's Exhibit 27 to the ledger of the bankrupt.

Of course, the Trustee has no personal knowledge of the books, except he knows what books were turned over to him by the bankrupt, and he has said these were the books and records of the bankrupt, turned over to him. [64]

As far as taking out part, I will be glad to offer the ledger in toto as a part of the same exhibit. I merely didn't want to incumber the exhibits.

(Testimony of S. A. McAllister.)

As far as the witness' knowledge, when you are proving insolvency that is not improper. We have alleged insolvency and this goes to show insolvency.

We will offer the entire ledger, your Honor, and ask that the entire ledger be marked Trustee's Exhibit 28 and offer it into evidence.

I would like to say one more thing your Honor, as far as these books or any others are concerned, anybody's testimony as to what is in these books would be hearsay. These are the books of original entry and they are the best evidence of the state of the business affairs of the company.

Mr. Dougherty: If the Court please, if counsel is going to make statements of fact of that sort I believe he should be sworn, if he is stating of his own knowledge that this is the book of original entry.

The Referee: I think there are persons in the room that could prove that if he would like to have it.

Mr. Dougherty: May I inquire preliminarily?

The Referee: Yes.

Mr. Dougherty: Mr. McAllister, you have long experience as an accountant, do you not?

A. That is right. [65]

Mr. Dougherty: Mr. McAllister, I hand you Trustee's proffered exhibit for identification No. 28, being not only the one sheet but the entire book, and ask you if it is not the fact that that isn't a book of original entry but simply is a ledger containing part of the balances from other accounts?

(Testimony of S. A. McAllister.)

A. It is a general ledger, is what it is termed. It shows all the expense items, and asset items, and liability and so forth.

Mr. Dougherty: Yes, but it isn't a volume of original entry, is it?

A. There could be some other entries, yes; there would have to be.

Mr. Dougherty: The entry would be on the journal and on the various accounts that this book merely summarizes? A. That's right.

Mr. Dougherty: Do you know why, Mr. McAllister, part of the 1944 sheets are missing from this volume?

A. I think I can explain that. I think possibly Mr. Taylor could explain it better, but it seemed they had a habit every few years of transferring the sheets, and that is what they did.

Mr. Dougherty: So this isn't a complete volume in that respect?

A. It is complete from 1944 through '46.

Mr. Dougherty: Well, aren't some of the '44 sheets missing from there, Mr. McAllister?

A. Well, except this one that is missing, Exhibit No. 28.

Mr. Dougherty: And aren't there 1946 transactions which [66] aren't recorded there?

A. Not to my knowledge. It looks as though some of these accounts have balances as of January 1, 1946. They aren't itemized and I think you are correct in that part, but for the most part they are all itemized.

(Testimony of S. A. McAllister.)

Mr. Dougherty: They do not have January 1, 1947, balances there?      A. No.

Mr. Dougherty: Or 1948?

A. I think not. I just got ahold of this book yesterday. I haven't had a chance to look at it. I would say it just goes up to 1946, the end of December, 1946. I haven't seen any '47 or '48 entries here (looking through ledger).

Mr. Dougherty: So, as I understand it, you haven't made an examination of this?

A. Well, my experience as an accountant teaches me that apparently it is in balance. I could strike off a balance sheet, if that is what you want.

Mr. Dougherty: Could you, as of the end of '44?

A. I think so.

Mr. Dougherty: I thought your testimony was that some of the '44 sheets were gone?

A. Some of these items do show balances as of January, '46, but it wouldn't have any relation to '44.

Mr. Dougherty: But are all of the '44 sheets there? [67]      A. I think they are, yes.

Mr. Dougherty: What balance does it show for the asset balance for trucks and trailers?

A. Account No. 1222 shows a total asset value of \$63,949.49, and on Account No. 2521, termed as "Reserve for Depreciation — Trucks" it shows a credit indicating a reserve set up of \$47,432.59.

Mr. Dougherty: As of what date is this, Mr. McAllister?

(Testimony of S. A. McAllister.)

A. Well, this is as of December 31, 1946.

Mr. Dougherty: What is the figure as of December 31, 1944?

A. Well, it shows an asset value of \$68,238.96 but that part of the "Reserved for Depreciation" sheet is not complete. It has a balance as of January 1, 1946, hence I would have to take the trial balances for '44 and '45 to figure out the depreciation to get the reserve set up.

Mr. Dougherty: So, then, some of the '44 sheets, or at least one of them, seems to be missing?

A. Yes, but the balance sheet is there. It can be worked out. If you want a trial balance as of December 31, 1944, I am sure it can be worked out with the books we have.

Mr. Dougherty: How long have you had possession of this volume?

A. I just got it yesterday.

The Referee: Where has it been?

A. Over at the Rand Truck warehouse.

The Referee: Well, had you had it before? [68]

A. I had some of the books, your Honor, but these old books I didn't take. I took the current books; that is, for about a year back.

Mr. Dougherty: Your Honor, I don't want to impede the progress of this. If someone who has knowledge can assure me that this is the volume I have no particular objection to its being received.

The Referee: Mr. McAllister, did you remove that sheet from this volume, this Exhibit 28?



(Testimony of S. A. McAllister.)

A. Yes, sir, I did.

The Referee: Could you reinsert it, please?

A. Yes (reinserting sheet previously marked Trustee's Exhibit 28 for identification).

Mr. Miller: Mark the ledger on the outside cover.

(Thereupon a green-backed ledger was marked for identification as Trustee's Exhibit No. 28.)

The Referee: Do you want Mr. Taylor to identify this book?

Mr. Miller: Maybe he could identify it but he didn't make the entries.

The Referee: I am aware of that, but I wanted to know if he was in charge of this. If you are going to put him on I will reserve my ruling.

Mr. Miller: We have no further questions of Mr. McAllister. We have one other witness.

Mr. Dougherty: No inquiries. [69]

### BERYL B. TAYLOR

was thereupon produced as a witness in behalf of the Trustee and, being first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Bollenback:

Q. Mr. Taylor, you were formerly connected with the Rand Truck Line?

A. I was, yes, sir.

(Testimony of Beryl B. Taylor.)

Q. In what capacity?

A. At the time of filing bankruptcy I was president.

Q. And how long had you been connected with the company prior to that time?

A. Since August 15, 1946.

Q. You have an exhibit in front of you, Trustee's Exhibit 28 for identification, which purports to be a ledger. Will you examine it and tell me whether you can identify that as a part of the books and records of the Rand Truck Line?

A. I am sure it is. I recognize all the handwriting. I had nothing to do with making the entries myself.

Q. Will you say it a little louder, Mr. Taylor, please?

A. I said I am sure it is because I recognize all the handwriting but I didn't prepare the book myself.

Q. You didn't prepare the book yourself. Was it made in the course of the ordinary business of the Rand Truck Line?

A. It was made by a party who was, prior to 1946, in the employ of [70] the Rand Truck Line for the purposes of preparing their financial statements and making their general ledger entries.

Mr. Bollenback: At this time we reoffer it.

Mr. Dougherty: No objection, your Honor.

The Referee: It may be received.

(Testimony of Beryl B. Taylor.)

(Thereupon, the ledger heretofore marked as Trustee's Exhibit No. 28 for identification was marked as received in evidence.)

Mr. Bollenback: Will you mark this?

(Thereupon a sheet headed "Analysis of Account No. 1650 'Other Investments—Officers'" was marked for identification as Trustee's Exhibit No. 29.)

Q. Mr. Taylor, I am going to hand you Trustee's Exhibit 29 for identification, which purports to be an Analysis of Account 1650, Other Investments—Officers, and ask you whether or not you took that information off of the books and records of the Rand Truck Line?

A. It was taken from the records, yes.

Q. By you or by someone under your direction?

A. Yes.

Mr. Bollenback: Now, your Honor, I don't know whether that is particularly relevant or not. It does show that some payments that were made to Otto Heider were charged to the account of the officers of the Rand Truck Line. It is offered in evidence in order that this Court might have all the evidence in front of it, [71] and if there is going to be any strenuous objection to it we will withdraw our offer.

Mr. Dougherty: No objection, your Honor.

The Referee: It may be received.

(Thereupon, the document heretofore marked for identification Trustee's Exhibit No. 29, was marked as received in evidence.)

(Testimony of Beryl B. Taylor.)

The Referee: From what source was that taken, may I ask?

A. Well, the 1659 account is a general ledger account and it could be traced back to the original book of entry to determine what they were and to whom they were paid.

Mr. Bollenback: At this time, your Honor, in order to avoid any oversight, the Trustee desires to reoffer in evidence Trustee's Exhibits 1 to 29, inclusive.

The Referee: Some of those were marked in the previous hearing, is that right?

Mr. Bollenback: They were, your Honor, and some of them have been marked twice, but the present set of numbers runs from 1 to 29. There are some duplications, but just in order that we don't overlook something, it is my desire to reoffer all of the exhibits that have been introduced.

The Referee: They will be received, subject to the objections which have been made in the record from time to time.

Mr. Bollenback: And now, your Honor, at this time the Trustee desires to amend his Third Objection to Proof of Claim, commencing [72] in the middle of page 4, and the reason for the amendment is that the evidence at this point does not disclose that any greater sum than \$31,500 was ever paid by Otto Heider to anybody on this mortgage, the first one, and in the first objections I did set out \$31,500 on line 2 of page 2, but in pleading the third defense the figure of \$36,500 was used be-

(Testimony of Beryl B. Taylor.)

cause that is the figure Mr. Heider stated on his deposition at the previous hearing.

The Trustee now desires to amend that to conform to the proof up to the present time of \$31,500, and that will necessarily change the other figures and the percentages in the objections to the claim. It will deduct \$5,000 from the principal and add \$5,000 to the interest, and then the claim balance of \$13,000 that was claimed to be due at the time it was refinanced would—a different proportion of it would be unpaid principal and unpaid interest, and it throws the computation completely off as to the second mortgage. However, the principle is there in essence, and that is that it was, in fact, an acrimonious transaction, and it is merely the details in how acrimonious it was for which this amendment is sought.

Mr. Dougherty: We object, your Honor. Of course, the amendment cannot be made as a matter of course. It can only be made by a legal court. Secondly, the objections as filed, are the sworn statement of the Trustee. I hesitate to be a party to any suggestion that the Trustee would care to deviate in any respect [73] from his sworn statements. Thirdly, we object again on the ground of laches. We have been unable to find any case where any court has allowed objections or amendments to objections to be filed at this late date. I am speaking of any reported case. Collier's Bankruptcy Manual indicates such tardy amendments cannot be



(Testimony of Beryl B. Taylor.)

filed either by the trustee or by anyone, and we would renew—we would object to the amendment on the same ground that we have objected to the objections being received.

The Referee: This amendment is in the nature of an amendment to the pleadings to conform to the testimony, is it not?

Mr. Bollenback: That is our position, your Honor, and further, Mr. McAllister is not in the position of the ordinary litigant who swears to a pleading. He has necessarily filed these pleadings as a result of hearsay. He didn't have any personal knowledge of the transaction so he should not be bound by any claimed admission.

Mr. Dougherty: If the Court please, I have always conceded the function of a trustee to make a preliminary examination. In this instance 7 years, approximately, have been allowed for that. While in minor matters we would have no objection to an amendment to conform with what counsel's idea of the proof is—in fact, however, the proof here has shown a far greater sum than alleged. However, as I understand this pleading, it was the informed judgment of the Trustee that that was the correct figure, and I have heard nothing which would in any way impair that judgment, [74] and it is a sworn statement.

The Referee: I am inclined to allow the amendment. It seems to me under the Rules of Civil Procedure they are very liberal in allowing amend-

(Testimony of Beryl B. Taylor.)

ments to pleadings, and this is in the nature of a pleading, being an objection to a claim.

Mr. Dougherty: Well, the Court has ruled. I was going to comment that I had never known of an amendment being allowed during trial in a Federal Court, but——

The Referee: I may say now that I didn't rule on the Supplemental Objections to the claim of Otto Heider. I don't see that they said anything, one way or the other. Therefore, I will sustain counsel's objection to this Supplemental Objection to Claim.

Mr. Bollenback: The Trustee has nothing further.

Mr. Dougherty: You may step down, Mr. Taylor.

(Witness excused.)

Mr. Dougherty: The Claimant will call Mr. Heider. [75]

### OTTO W. HEIDER

was thereupon produced as a witness in his own behalf and, being first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Dougherty:

Q. Now, Mr. Heider, was your claim in this matter filed on or about June 23 of 1949?

A. That's right.

The Referee: Just for the record, it was filed

(Testimony of Otto W. Heider.)

June 30th. If you would like you may refer to the original claim.

Mr. Dougherty: Thank you.

Q. Were the Trustee's objections to your claim served on you on or about January 26 of 1956?

A. Yes, a copy of it.

Q. Yes.

A. That was the first I had knowledge that there were any objections to the claim.

Q. Do you recall the prior hearing on this matter? A. I do; about seven years ago.

Q. About July 6 of 1949?

A. That's right.

Q. Do you recall the statement of the Referee at that time that if the Trustee had any objections to the claim as filed, he would make those objections?

A. Yes, he did, and I took the matter up with Mr. Bollenback at [76] that time.

Q. And what occurred at that time?

A. Well, he asked me if I would give a discount if they paid it off immediately and I told him I would. That was before the hearing and after he had investigated the matter, and I told him I would give a discount of three or four per cent because they wanted to pay it off and get the equipment free, and I agreed to it.

Mr. Bollenback: Just a minute. I object to this statement that I made this offer after I had investigated it. He doesn't know whether I had investigated it. If he is going to testify to any conversa-

(Testimony of Otto W. Heider.)

tion with me let him say what I said and not his conclusions as to what I said. Further, it is not binding upon the Trustee.

The Referee: Well, you may continue to state what conversations you had with counsel for the Trustee. The objection as to what investigations he had made, I think, should be sustained.

A. (Continuing): Well, it was some time after the petition in bankruptcy had been filed that Mr. Bollenback contacted me.

Q. (By Mr. Dougherty): Mr. Heider, after 1949 and before 1946 have your office records been disrupted in any manner?

A. Yes, they have. The Bureau of Internal Revenue had them for two years and a half, all of them.

Mr. Bollenback: Just a minute here. I don't know just what the purpose of this thing is, for two reasons. There's been no [77] answer filed in this case. We don't know what he is trying to prove and what the disruption of his office records—Any disruption of his office records subsequent to the time of this original deposition is certainly immaterial because he produced his books and records at that time, and I would like to know the purpose. As I say, there is a complete absence of any answer, and actually it would probably be proper, technically, to move for a judgment on the ground that there hasn't been any answer, and he is attempting to plead laches, apparently. I am not sure, but if it is, it is an affirmative defense and we don't have any answer. I mean as far as the pleadings go, the

(Testimony of Otto W. Heider.)

objections are admitted because they aren't denied.

Mr. Dougherty: If the Court please, it is my understanding that it would be most improper for us to file any responsive pleading to the objections. First, it is my understanding that under the Federal Rules replies are not allowed unless a reply is directed by the Court. There has been no reply directed in this instance. It is my understanding that the claim is in the nature of a complaint and the objection is in the nature of an answer and this is the form for the court proceedings, and it is so stated in Collier.

With reference to what this line of testimony seeks to develop, counsel is quite correct. We are attempting to show laches.

The Referee: I think you made that objection previously. [78]

You may proceed with your testimony, and, of course, subject to cross-examination.

Q. (By Mr. Dougherty): Mr. Heider, did the Bureau of Internal Revenue return all of your records to you?

A. No; they didn't return all of them. They had all of them and they didn't return all of them and they still have some of them.

Q. Can you now present documentary and other proof which you could have presented—that is, to refute these objections, which you could have presented, say in 1949?

A. I think that I could have gotten some more books and records if they hadn't all been worked



(Testimony of Otto W. Heider.)

over for two and a half years by somebody other than myself.

Q. I believe, Mr. Heider, you stated that it was your understanding that objections would not be filed?  
A. That's right.

Q. What gave you that impression?

A. Well, after Mr. McAllister was appointed Trustee, Mr. Bollenback contacted me to pay it off, so I just dropped the matter and thought that was the end of it and never did any more work on it.

Q. Did the fact that no objections were filed for many years tend to change your impression at all?

A. No complaint of any kind has ever been made to the claim until this year.

Q. Now, Mr. Heider, do you, of your own personal knowledge, know [79] anything about the assets and liabilities of the Rand Truck Line for any of the periods herein involved?

A. Well, generally; not in detail.

Q. What was your understanding of its condition, say in 1944?

A. Well, my understanding was that they were in very good and substantial position—an operating, going concern, getting their assets in promptly and paying current bills promptly.

Q. Did they obtain equipment financing from you from time to time?

A. Considerable, on different items that they needed in their rolling stock, more than anything else. I did, from time to time, finance trailers or

(Testimony of Otto W. Heider.)

trucks or whatever pieces of equipment they wanted.

Q. Generally, how did they keep up their accounts with you?      A. Very good; very good.

Q. Do you know what their financial reputation was in the community or communities in which they did business?

Mr. Bollenback: Oh, I object.

A. Well, in my community, Sheridan and Willamina, where they did business, their reputation was excellent.

Q. And did that excellent reputation involve their paying their current liabilities promptly?

A. It did so far as I knew. I had no occasion to know otherwise.

Q. Did you at any time have any information that the Rand Truck Line might be insolvent?

A. No, I knew that they had the fire difficulty, and it was my [80] understanding, because of freight and things that they had in the warehouse, that they did suffer a very substantial loss, but outside of that fire difficulty, I didn't know of any difficulty whatever.

Q. As a matter of fact, Mr. Heider, if you had realized that there might be any insolvency there——

Mr. Bollenback: Oh, just a minute, your Honor. I am going to object to that question, at least.

Mr. Dougherty: Counsel might wait until he hears the question.

(Testimony of Otto W. Heider.)

Mr. Bollenback: I have heard enough of it that I know I am going to object to it.

The Referee: Let him finish.

Mr. Bollenback: Go ahead and complete it for the purpose of the record.

Q. (By Mr. Dougherty): Had you even suspected, Mr. Heider, that the Rand Truck Line was insolvent, would you have continued to loan it money?

Mr. Bollenback: I am going to object to that, your Honor, as being purely a hypothetical question——

A. No.

Mr. Bollenback (Continuing): ——and I ask the witness not to answer until I make my objection. I was stopped in making my objection. Until the objection has been completed I have the right to the same courtesy. I ask that the answer be stricken, your Honor. [81]

The Referee: I think it is going a little far afield. Mr. Heider was financing this company on what he thought to be a secured basis, anyway, so I sustain the objection.

Q. (By Mr. Dougherty): Mr. Heider, did you ever make any advances to this company without any immediate security?

A. No, I think that only a time or two I gave them checks—just what dates and amounts I can't recall, but I think I did without any security just as an accommodation.

Q. But only in a limited number of instances?

(Testimony of Otto W. Heider.)

A. Very limited; very limited.

Q. Did you purchase this mortgage executed by Rand Truck Line—did you purchase it from the payees named in that mortgage?

A. Yes, I purchased it from the payee named in the mortgage.

Q. And they assigned that mortgage to you?

A. Yes, assigned and transferred it to me, and I am the owner and holder of what you call the second mortgage, I guess—note and mortgage.

Mr. Dougherty: If the Court please, the assignment to Mr. Heider is Trustee's Exhibit No. 10, which was here all the time although we didn't know it. Now, this second mortgage, and also the first mortgage, was interest included in the principal amount?

A. In the balance amount due—the original balance the interest was included, that's right.

Q. Was the apparent interest collected in full?

A. No, because when I wrote the second mortgage, as I recall— [82] now, this is 7 years ago, and I haven't looked it up since, but I am just giving you my memory—there was a substantial amount of discount given on the first mortgage when I wrote the second mortgage—approximately \$900. I am not exactly sure of the amount, but there was a substantial amount of discount given.

Q. In other words, is it correct to say, Mr. Heider, that you gave them a receipt for moneys which you, in fact, did not receive?

A. Yes, because there were some payments yet

(Testimony of Otto W. Heider.)

to accrue on their first mortgage, and writing up the second mortgage they would be entitled to a refund on that unearned interest, so to speak.

Q. Referring to a group of papers marked Trustees' Exhibit No. 26, does that show an occasion where you gave him credit of \$960 in interest which was not, in fact, collected?

A. That is what I had in mind. I hadn't seen that for 7 years, but 960 was the amount. That's right. That is on what we would call the first mortgage.

The Referee: That is all that was unearned at the time you rewrote the mortgage in '46?

A. That's right; \$960 is unearned interest. It is marked here on the last payments of the mortgage.

Q. (By Mr. Dougherty): Were the installment payments on the mortgage delinquent at any time?

A. Oh, yes; they were delinquent at different times, which I wasn't concerned about particularly. They did get behind. [83]

Q. Did you charge any additional interest on the delinquent payments?

A. No, I didn't; I didn't charge them any additional interest on the delinquent payments.

Q. Is it correct to say, then, that there would have been additional interest due which wasn't collected?

Mr. Bollenback: I am going to object to that as being a conclusion unless he can show dates and times and amounts——

A. The note should provide——



(Testimony of Otto W. Heider.)

Mr. Bollenback: Just a minute. Unless he can produce the dates, the amount of interest, the time that it was past due, and how much interest was charged or would have accrued, to say that some other interest would have accrued is merely a conclusion.

The Referee: I think I am going to have to sustain that objection.

Mr. Dougherty: If the Court please, of course the reason that we cannot produce the records is because of the delay in making the objections.

The Referee: Isn't there a record of when these payments were made?

Mr. Dougherty: This appears to be a partial record, your Honor, and it does show that they were made at odd times—weren't made with particular regularity, and it does show that some payments were skipped, but I don't believe that it is a complete record. [84]

The Referee: Well, that record may be considered in connection with your question. Is that record an exhibit?

Mr. Dougherty: Yes, your Honor. They all have exhibit numbers.

The Referee: All right, that is fine.

Mr. Dougherty: Well, they all have exhibit numbers but this one page seems to have become detached.

The Referee: Keep them together, then.

Q. (By Mr. Dougherty): What was the amount of the obligation due and unpaid, Mr. Heider?

(Testimony of Otto W. Heider.)

A. At the time I filed the claim, twelve thousand-something. I have got a copy in my files here of the claim. You have the claim there. I know that the amount in the claim is correct—proof of claim.

Q. Was the proof of claim prepared from your books and records? A. At that time, it was.

Q. Were those books and records kept in the ordinary and regular course of your business?

A. They were.

Q. Were all of the entries made in those books and records made by you personally?

A. By me, personally and Miss Lawrence, who was working for me for thirty years.

Q. If they weren't made by you personally, were they made under your supervision? [85]

A. Yes, they were, in my office.

Q. And did the claim, as made, reflect those records? A. Just exactly as they were.

Mr. Dougherty: No further inquiries, your Honor.

#### Cross-Examination

By Mr. Bollenback:

Q. Mr. Heider, are you a member of the Oregon State Bar? A. Yes.

Q. How long have you been practicing law in the State of Oregon?

A. Oh, I don't know, about forty years, pretty close.

Q. You were first admitted in what year, do you remember?

(Testimony of Otto W. Heider.)

A. '15, but I didn't practice there for part of the earlier years very much, that is, the first five years.

Q. Well, you have been a continuous member, then, for about 41 years, is that right?

A. Well, I will in August of this year.

Q. Now, you say that you didn't have any knowledge that the Trustee was going to object to this claim of yours until January, 1956, is that what I understood you to say?

A. Yes, Mr. McAllister—

Q. Just a minute. Answer me, "Yes" or "No." Is that what you say?

Mr. Dougherty: If the Court please—

Q. (By Mr. Bollenback): Now, you can explain if you want to, [86] but I want an answer first.

Mr. Dougherty: If the Court please, I will object to counsel arguing with the witness.

The Referee: You need not argue.

Q. (By Mr. Bollenback): January, 1956?

A. Yes, I received the objection January, '56.

Q. And that was the first you knew that the Trustee was going to object to this claim?

A. Well, I think that was the first objection ever served on me, except the Circuit Court procedure.

Q. There was a Circuit Court lawsuit against you, wasn't there? A. It is still pending.

Q. In which the Trustee is seeking to obtain 40,000 or more from you, is that right?

A. And some other defendants, too.

Q. And it grows out of this same transaction, doesn't it? A. Yes.

(Testimony of Otto W. Heider.)

Q. And did you think that the Trustee was going to sue you for \$40,000 and still not object to your claim for \$11,000?      A. As a matter of fact——

Q. Just answer me, "Yes" or "No."

I would like to have the reporter read the question and the witness give a yes-or-no answer and then make any explanation he desires, but a yes-or-no answer first.

Mr. Dougherty: I must instruct you, Mr. Heider, that if [87] it is a question impossible to answer by "Yes" or "No," then you need not so answer it.

(The question was read.)

A. That answer has to be qualified.

Mr. Bollenback: Well, go ahead and answer.

A. Mr. McAllister and I have been taking this up with one another for a considerable time towards settlement and compromise and we talked it over at different times over the last seven years, and I never did think that the lawsuit in the Circuit Court was brought in good faith and with any intention of ever recovering on it. In fact, I was positive of that, that it was never procured with any intention of continuing in good faith against any of the defendants, but it was simply to cover up a claim that I had filed in this court. That was the only purpose of the lawsuit in the Circuit Court, and that has been ascertained by the case being thrown out of court several times since you filed it.

Mr. Bollenback: Well, now, just read the question again, and I ask the Court to have the witness

(Testimony of Otto W. Heider.)

answer the question "Yes" or "No." He has given his explanation; now I would like to have an answer.

(The question was reread as follows: "And did you think that the Trustee was going to sue you for \$40,000 and still not object to your claim for \$11,000?") [88]

A. Yes, I did.

Q. (By Mr. Bollenback): Now when did the Internal Revenue first show an interest in your books? A. In December, 1950.

Q. In December, 1950? A. Yes.

Q. Now this hearing was had in July of 1949, isn't that right? A. Yes.

Q. And you were asked by the Court to produce all your books and records concerning this transaction, weren't you? Answer me "Yes" or "No."

A. Well, not until after they had a hearing. We never had a subsequent hearing before that. I was asked to bring out records at a subsequent time.

Mr. Bollenback: Read the question again, please.

(The last question was read.)

A. As far as it was possible to do so, yes.

Q. (By Mr. Bollenback): All right, so you did.

A. No, not all of them.

Q. In other words, you disobeyed the Court's instructions?

Mr. Dougherty: If the Court please, I must object to counsel misrepresenting the record. The Court instructed Mr. Heider to bring an itemized statement of receipts and disbursements and the



(Testimony of Otto W. Heider.)

Court did not request or instruct Mr. Heider to bring all of his books and records, and counsel well knows [89] what the record shows.

Mr. Bollenback: I shall read what the record shows, reading from Referee's statement on page 4 of the transcript, quoting from the Referee—referring back to page 3: "Now, at the time Mr. Heider sent up this proof of claim he wrote me a letter in which he asked whether it would be necessary for him to appear today in view of the fact that he had filed his proof of claim, and I wrote acknowledging receipt of the claim and of his letter. I said, 'The claim is deficient in that you did not include therein an itemized statement of monies disbursed or received by you in connection with any transactions or payments made in connection with said mortgage or the prior mortgage executed September 18, 1944.' In that I was following the language of the order. I said, 'Please bring such a statement with you at the hearing scheduled in my courtroom on Wednesday, July 6, 1949, at 10:00 o'clock a.m. Also bring with you your original records showing receipts and disbursements in connection with the two mortgages. The hearing set for next Wednesday is for the purpose of receiving proof of the balance due on your mortgage and of all transactions in connection with it so that the Court may determine the validity of the mortgage and the amount owing thereon.' "

Q. Now, did you, in response to that request of the Court, produce your original records?

(Testimony of Otto W. Heider.)

Mr. Dougherty: Now if the Court please—— [90]

The Referee: I think you did, didn't you—those checks and everything?

A. Yes, as far as I could at that time.

The Referee: Well, how do you answer the question? He asked you whether you produced them or not.

A. Well, yes, so far as I could get them together at that time.

Q. (By Mr. Bollenback): And the interference of the Internal Revenue did not occur until after that time?

A. Well, not until after that hearing, no.

Q. Now did you ever loan any money to Bob Rand before the Markees took the Rand Truck Line over?      A. Personal loans to him?

Q. Corporation loans.

A. I believe these loans we are talking about are the only loans—these two to the Rand Truck Line corporation were the only loans I ever made them.

Q. Well, I got the impression that you had made other loans and that they had established a credit with you.      A. To Bob Rand?

Q. Yes.

A. Well, just on vehicles, just like I told you before, just for trucks or trailers or rolling stock.

Q. You had loaned money to Bob Rand for trucks and trailers?

A. Well, to the Rand Truck Line. Bob Rand was the principal [91] owner.

Q. Now you say you thought that they were

(Testimony of Otto W. Heider.)

solvent?           A. I knew they were solvent.

Q. You knew they were solvent?

A. Yes, I knew they were solvent.

Q. But you had some difficulty getting payments from them, didn't you?

A. No, I didn't have any particular difficulty. The only difficulty I had was once in awhile they would ask me to hold a check until they got in their monthly bills, sometimes. A check might be a few days overdue, so to speak, before they got in their collections, and I think I did hold up the check.

Q. In other words, they weren't very solvent if you had to hold their checks?

Mr. Dougherty: Object——

A. They had a very solvent record in my community.

Q. (By Mr. Bollenback): Did you ever examine the books of the corporation?

A. I am not a bookkeeper or auditor.

Q. Just answer the question.           A. No.

Q. You never did?

A. Oh, I have seen some of the books but I never made an examination of them.

Q. How did you know they were solvent then? [92]

A. Because I knew they paid their bills promptly.

Q. Did you know their assets exceeded their liabilities?

A. Well, these books show that their assets exceeded their liabilities.

(Testimony of Otto W. Heider.)

Q. At what time, Mr. Heider?

A. Well, in '44 and '45 and '46.

Q. Taking your mortgage into consideration?

A. Well, taking any of their liabilities into consideration, I would say.

Q. Do you realize that this first mortgage that you took did not appear on the corporation books for about two and a half years after it was executed?

A. I didn't keep the books of the company at any time.

Q. Did you notice in your examination of these books that that didn't show up on the corporation liabilities? A. I never checked that at all.

Q. Then you didn't know whether they were solvent or not, did you?

A. Well, I knew they met their obligation to me, is all.

Q. Now you mentioned that you had negotiated with Mr. McAllister to compromise this claim.

A. We discussed it several times. We never arrived at any figure, we never agreed on any amount.

Q. Did you ever make an offer?

A. And neither did he ever make an offer to me—I mean a [93] firm offer.

Q. Did you ever make an offer to him?

A. I don't think he ever asked me to make a definite offer.

The Referee: I don't think I should consider this.

Mr. Bollenback: It isn't proper, your Honor,

(Testimony of Otto W. Heider.)

but he brought it up. It isn't a proper part of the testimony but he raised the question.

Q. Mr. Heider, do you remember when you were served with the complaint and summons in the Circuit Court suit with relation to the taking of this deposition on July 6, 1949?

A. Oh, it was some time afterwards. I could guess.

Q. Do you have your file with you on that case?

A. When the first complaint was filed?

Q. Yes.

A. I think it was five or six years ago.

Q. Let's get the date that first complaint was filed or the date of your first appearance in the case.

A. I think it was in '47.

Mr. Dougherty: My file goes back to a complaint which was filed on September 3, 1952.

Mr. Heider: Oh, it was prior to that.

Mr. Dougherty: I don't have the first complaint.

Mr. Heider: Mr. Bollenback should have it. I think he prepared it.

Mr. Bollenback: My files of the Rand Truck Line are [94] voluminous and I didn't bring that one with me.

Mr. Heider: Maybe I can give you the date if you want it. I think there have been five amended complaints filed, and I think you are due now for another one. (Looking through file.) Here are some papers back in 1950, so I know it was six years ago.

Mr. Miller: Perhaps we can stipulate for the record that whatever the court record in Mult-



(Testimony of Otto W. Heider.)

nomah County shows is the original filing date. Is that right, Mr. Dougherty?

Mr. Dougherty: Yes. I am certainly not stipulating, though, that those first few amended complaints would put him on notice.

Mr. Miller: All I am asking is whether the commencement of a suit, whether you liked it or not, was made on a certain date.

Mr. Dougherty: Now please let's keep this on a professional basis.

The Referee: That will be understood.

Q. (By Mr. Bollenback): Did you turn any records involving this transaction over to the Bureau of Internal Revenue?

A. They had all of them, checked the figures completely.

Q. Concerning this transaction?

A. Exactly.

Q. They took your original records?

A. They did, my original books and records and checks. Any, of course, they couldn't get, I told them where the records [95] were on file down here. I don't know if they came here and checked them over.

Q. What papers did you turn over to them involving this transaction—what records did you turn over? A. These files right here, 1, 2, 3.

Q. And what else?

A. And my own bookkeeper's books—original records.

Q. Original records on this transaction?

(Testimony of Otto W. Heider.)

A. On this and other transactions.

Q. Did you get those books back?

A. I got some of them back.

Q. Did you get them back on this transaction?

A. I don't think I did.

Q. Do you remember at the time of the taking of this other deposition when you insisted that these yellow sheets were the only ones in your original transaction?

A. Well, I had these files here.

Q. Just answer my question.

A. They were records of payments, yes.

Q. They were your original records?

A. Yes, they were my original records, but some of the notations on those records were probably put on other books, but they were my original records that I had here before.

Q. And they were in the Bankruptcy Court?

A. I told them where they were. Whether they called on [96] Mr. Snedecor and got them, I don't know, but they knew where they were.

Q. Did you turn any cancelled checks over to them?

A. Not on this transaction in particular, but all of them. If there were any that weren't here they had them.

Q. Did you turn any other cancelled checks over to them that involved this transaction?

A. I don't know that I turned any others because I think most of the checks have been introduced here.

(Testimony of Otto W. Heider.)

Mr. Bollenback: That is all.

The Referee: Do you have any further questions?

Mr. Dougherty: Yes, if the Court please.

### Redirect Examination

By Mr. Dougherty:

Q. Isn't it a fact, Mr. Heider, that none of the first two or three complaints——

Mr. Bollenback: Now, if the Court please——

The Referee: Go ahead.

Q. (By Mr. Dougherty): Isn't it a fact, Mr. Heider, that none of the first two or three complaints filed by the Trustee raised any of the issues raised by these objections here?

A. Well, that is my understanding.

Mr. Bollenback: Just a minute. Just a minute. I am going to object to that as calling for a conclusion of law.

Mr. Dougherty: You have qualified the witness as a lawyer [97] with 41 years' experience.

Mr. Bollenback: Produce your evidence, then. Put your pleadings in evidence if you want to, but let's not have conclusions of law.

Mr. Dougherty: I am asking Mr. Heider as a matter of fact——

Mr. Bollenback: I am objecting to the question. Put the pleadings in evidence. That is the best evidence.

The Referee: I will let him answer it, I think,

(Testimony of Otto W. Heider.)

and you may submit your pleadings into evidence if you like.

A. That is my recollection of the matter, that these objections weren't raised in those first complaints, and I haven't checked them for a long time but that is my recollection of it.

Q. (By Mr. Dougherty): Let's take the one matter of usury. Isn't it a fact that Mr. Bollenback didn't introduce that into this litigation until just a couple of years ago?

A. That's right, that's correct.

Q. And that is only one example.

Mr. Bollenback: I suggest that Mr. Dougherty be sworn.

Mr. Dougherty: If the Court please, I should like to go back now and do something which I should have done on direct examination.

The Referee: You may proceed.

Mr. Dougherty: I will ask the reporter to mark these six pieces of paper.

(Thereupon, two original checks and three carbon copies of checks purporting to have been executed by Otto W. Heider to Rand Truck Line or to Rand Truck Line and others, in the year 1946, and a note executed by Floyd L. Long, dated May 15, 1944, was marked Claimant's Exhibit No. 30 for identification.)

Q. (By Mr. Dougherty): Mr. Heider, I show you 6 documents marked Claimant's Exhibit No. 30

(Testimony of Otto W. Heider.)

for identification, and ask you if you will tell us what those are.

A. Those are payments to the Rand Truck Line corporation in '46 and these carbon checks are exact duplicates of the original checks, and this note here, Floyd L. Long, dated May 15, 1944, was one of the obligations that was written into what we call the, as I recall—into the mortgages that are involved, and these two checks were on other transactions but were eventually incorporated into what we call the last mortgage.

Q. May the originals of some of these carbon copies be in evidence already?

A. I think they are. The originals of the carbon copies, I think are already in evidence.

Mr. Dougherty: We offer Claimant's Exhibit No. 30, your Honor.

Mr. Bollenback: I would like to see it, please.

I would like to ask the witness a preliminary question, your Honor. [99]

Why did you hold these checks back without introducing them before?

A. Couldn't find them.

Mr. Bollenback: I mean today.

A. I had them here all day long.

Mr. Bollenback: Why did you claim that the Bureau of Internal Revenue had your cancelled checks and you couldn't produce any more evidence?

Mr. Dougherty: The witness made no such claim.



(Testimony of Otto W. Heider.)

Mr. Bollenback: Well, then his attorney did.

Mr. Dougherty: That is false likewise.

A. I didn't have all my records. I had about nine-tenths of them.

Mr. Bollenback: Now, if your Honor please, this is all under one exhibit and I don't know what I am going to do about all these checks. For the record we will object to any of this evidence going in on the ground it should have been introduced on the examination in chief rather than on redirect. It just appears that this witness was holding these documents back with the idea of not using them until he found it was necessary to use them, and then he produces some checks.

Now just a minute. I am not through.

And on the further ground that he has, by his own statement made not 15 minutes ago, said that he was unable to produce any further books and records because the Bureau of [100] Internal Revenue had taken his cancelled checks and had not returned them to him, and furthermore as to one of these documents—it is a note to Page & Page and made by a man by the name of Floyd Long, and neither Rand Truck Line nor Otto Heider shows up on the document, and what it has to do with this case is something I don't know, but I think that the bad faith of this man producing these checks at this late date, in view of his previous claims, is enough to discredit the entire transaction.

(Testimony of Otto W. Heider.)

Mr. Dougherty: If the Court please, first as to why they were not introduced before, they were before me and were covered up in a mass of papers. It is my oversight. Secondly, as to the statements of the witness, they have been merely that he is not now able to produce as much evidence as he would have been able to seven years ago. He has not made any claim that he wasn't able to produce any evidence now. Thirdly, with respect to the note to Page & Page, signed by Long, the witness' testimony was that that was some evidence of an equipment transaction which was included in his transaction with Rand Truck Line, and I should like, if there is any question about that, to examine the witness further with regard to that.

The Referee: Supposing you do that.

Mr. Bollenback: I suggest they separate the exhibit, your Honor, and mark that separately from the rest of them, but we also would like a ruling from the Court on our first objection, [101] that it should have gone in on direct examination.

The Referee: I am not going to take technical advantage of counsel and say that it cannot be introduced. The Court is quite liberal in allowing testimony to go in. I would allow the same to you. I do suggest that you make the checks one exhibit and help the Court by telling us what the purpose of them is, because I happened to be reading the record at the time you introduced them.

Mr. Dougherty: Yes. Then the five checks are

(Testimony of Otto W. Heider.)

marker Claimant's Exhibit 30. We have removed the note from the Claimant's Exhibit 30. They are checks from Otto Heider to Rand Truck Line, or copies of checks—that is, carbon copies of checks from Otto Heider to Rand Truck Line for various sums of money, all dated in 1946, and it was the witness' testimony that these represent advances made by Otto Heider to Rand Truck Line, which advances are reflected in the mortgages under consideration.

The Referee: Those were to enable them to purchase some equipment?

A. Yes, it was, and then when we made the second mortgage this was all picked up in the second mortgage—these checks were, and that note, too, of Mr. Long likewise represented equipment which was sold to the Rand Truck Line and I paid it off.

The Referee: All right. [102]

Q. (By Mr. Dougherty): Taking the check of March 19, 1946, for \$2,500, payable to Rand Truck Line, was that money advanced to them in connection with their purchase of a new Fruehauf van?

A. Yes, 24-foot, all-steel—a new van—4-wheel van.

Q. Well, tell us about any of the conditions.

A. This was for the purchase of a used '41 van.

The Referee: What is the amount of that check?

Mr. Dougherty: That is \$2,500.

Mr. Bollenback: Clear it up in my mind, Mr. Heider. Are these transactions in addition to the two mortgages, or what?

(Testimony of Otto W. Heider.)

A. No, they were incorporated in the mortgage.

Mr. Bollenback: In what mortgage?

A. In the last mortgage.

Mr. Bollenback: Oh. Both of them?

A. This one was incorporated in the first mortgage (indicating), but these were incorporated in the last mortgage.

Mr. Miller: Will you identify them for the record?

Mr. Dougherty: The one which has not been offered yet is the note.

The Referee: Well, as I understand it, after you had the first mortgage you assisted them in the financing of some additional equipment and had either conditional sales contracts or chattel mortgages on the equipment, and then you consolidated those when you took the second mortgage, with the original indebtedness which was given by the company to the stockholders [103] for the purchase of the stock.

A. Between the two mortgages, if you want to call it that way, I financed additional equipment.

The Referee: Yes, that's right. The Court understands it. The checks may be received in evidence.

(Thereupon, the five checks heretofore marked Claimant's Exhibit No. 30 were marked as received in evidence.)

Mr. Bollenback: I haven't examined them.



(Testimony of Otto W. Heider.)

The Referee: You may cross-examine later.

Mr. Dougherty: Will you mark this, please?

(Thereupon, a document purporting to be a promissory note executed by Floyd L. Long in favor of Page & Page Trailer Company on May 15, 1944, in the amount of \$3,786.00, was marked for identification as Claimant's Exhibit No. 31.)

Q. (By Mr. Dougherty): I hand you a note dated May 15, 1944, marked Claimant's Exhibit No. 31, and ask you if you can tell us what that is.

A. Well, that was made by Mr. Long to Page & Page Trailer Company, that manufactures here in Portland a Page trailer, and Mr. Long could not pay out on this note and the trailer was taken over by Rand Truck Line and this was incorporated into their mortgage, as Floyd L. Long lived at Grand Ronde and became insolvent and I did take the equipment back when I sold [104] it to Rand Truck Line, and then when they made the first mortgage they picked this up.

Q. So this is just some evidence of one of the items that went into the first mortgage?

A. Yes, that's right, and Mr. Long still lives at Grand Ronde, Oregon, the man that signed the note.

Mr. Bollenback: I never heard of the transaction before. I am going to object to it.

The Referee: What is the amount of it?

Mr. Bollenback: \$3,786.00, and it doesn't say how much—unless this witness is contending that he



(Testimony of Otto W. Heider.)

paid for the benefit of Rand, this entire amount, it is still incompetent and irrelevant. It doesn't prove anything. A. I didn't claim that.

Mr. Bollenback: Well, I am going to object to it until the transaction is aired.

A. I can explain it.

The Referee: Well, do you want the Court to understand that the mortgage given——

A. By Long.

The Referee: No, not that—the mortgage given to Mrs. Rand and assigned to you includes this indebtedness? It is the first time I have ever heard of it.

A. It is the first mortgage, not the second mortgage.

The Referee: The first mortgage is the one we are talking [105] about.

A. Yes, this indebtedness was included in the first mortgage, not the second mortgage.

The Referee: Who owed that indebtedness?

A. Well, I haven't got the mortgage any more. I forget how it was executed. Rand Truck Line owed the indebtedness.

The Referee: It was made payable to Mrs. Rand?

A. Well, made payable to Mrs. Rand and then assigned to me.

The Referee: Yes, but did the company owe Mrs. Rand some money?

A. I have forgotten the first mortgage. May I see the first mortgage a minute? I think I can clear

(Testimony of Otto W. Heider.)

that up if I can see the first mortgage. I think it is here. I returned the first mortgage to the Rand Truck Line when it was paid off by the renewal, and it is the one that is dated—I don't have that mortgage any more.

The Referee: Well, there is a copy of the mortgage there. Now, that mortgage was given to Mrs. Rand for the purpose of financing the purchase of the stock. How would that have anything to do with the note on some repossessed equipment?

A. It covered additional obligations besides what I did advance to the Rands. Mr. Rand testified that I paid him \$32,000, but it included an additional amount beside the \$32,000, and it was written into this mortgage. I consolidated it all into this mortgage because Mrs. Rand was not obligated on [106] this mortgage to pay it at all, and I consolidated some other indebtedness into this mortgage.

The Referee: No, you didn't in the first, did you? Did you in the first? You did in the second.

A. Yes, I did in the first as well as the second mortgage.

The Referee: And what are the items made up in the first mortgage, then? What are the items made up in Mrs. Rand's mortgage that you put in there?

A. Well, \$32,000, the checks, and some cash which Mr. Rand had in addition to the checks, and then not all of this note was in there but there had been some payments on it. I can ascertain, I think.

The Referee: I am going to sustain the objection

(Testimony of Otto W. Heider.)

on that offer, unless you can give me some more specific information from your records as to that.

A. I think I can get the information from my office.

The Referee: We may have oral argument. I can't accept that note as being any evidence with the vague statement of the witness. If you can get something specific for me you may do so, Mr. Dougherty, but it is too vague for me to understand.

Mr. Dougherty: It is my understanding, your Honor, that in this financing it was contemplated that Mr. Heider was going to loan the money to Rand Truck Line. Rand Truck Line already owed him some money.

The Referee: Well, then, I would like to have that [107] evidence. I will give you an opportunity to produce it if there is any evidence that at that time they owed Mr. Heider any money and it was incorporated in this obligation. I think it would be quite important to know that.

Mr. Dougherty: Well, we will do so with all of the evidence that we can on that point. Whether or not we can produce any, I don't know, your Honor. I suggest that 7 years ago such evidence could have been offered.

The Referee: I don't recall it ever being in any other testimony before.

Mr. Bollenback: May I ask the witness some questions, your Honor?

The Referee: Yes.

(Testimony of Otto W. Heider.)

Mr. Bollenback: Mr. Heider, at the time of the first hearing did you or did you not produce \$36,500 worth of checks and say that was what you gave for that first mortgage?

A. I think there were that many checks produced at that time.

Mr. Bollenback: Yes, and you said that was what you gave for the mortgage, isn't that right?

A. Well, this was also——

Mr. Bollenback: Just answer me. Isn't that what you said you gave for that mortgage at that time?

A. That amount in checks, I think.

Mr. Bollenback: And that the balance was with interest at 10 per cent, compounded [108] semiannually?

A. I might find the note and mortgage here. I will try.

Mr. Bollenback: I have another issue I would like to raise, your Honor, on this point.

Are you looking for something in particular, Mr. Heider?

A. Well, no. I can answer your question.

Mr. Bollenback: All right. I want to call your attention to the Earl Walden mortgage. So you won't be misled, I want to hand you Trustee's Exhibit 4, the Earl Walden mortgage. Now, that was a mortgage for \$1,080, payable in one year, is that right?

A. Yes.

Mr. Bollenback: And that included prepaid interest, did it not?

A. That's right.

(Testimony of Otto W. Heider.)

Mr. Bollenback: At what rate was the interest included?

A. I think the same as the others, 10 per cent.

Mr. Bollenback: Compounded semiannually?

A. Yes, I think it was.

Mr. Bollenback: Now, I want to hand you a check of a thousand dollars that you have just introduced in evidence, payable to Rand Truck Line or Earl Walden, and ask you if that is the check which you advanced in return for that mortgage.

A. Yes, there was another item there, though, that went into that besides this check. [109]

Mr. Bollenback: What was that?

A. I think there were some attorney's fees for services. I think I explained that to you originally.

Mr. Bollenback: Did you keep a ledger account of the services that you rendered to the Rand Truck Line?

A. Oh, I rendered services for them from time to time.

Mr. Bollenback: Answer my question.

Will the reporter read the question?

(The last question was read.)

A. I don't remember whether I kept one or not. I may have.

Mr. Dougherty: Are you through, Mr. Bollenback?

Mr. Bollenback: Beg pardon?

Mr. Dougherty: Are you through on that?



(Testimony of Otto W. Heider.)

Mr. Bollenback: No, I am not. I wanted him to answer that last question.

The Referee: He did answer.

Mr. Bollenback: What was it?

(The last answer was read.)

Mr. Bollenback: What services would you be rendering them in that connection, Mr. Heider?

A. Oh, matters we would take up with the Public Utilities sometimes, and routes, and things—just various matters when they would drop in there and ask for advice.

Mr. Bollenback: And how much was the fee that you charged that went into this transaction? [110]

Mr. Dougherty: Now, just a moment. He hasn't testified that he charged any fee. He said that that might be an explanation.

Mr. Bollenback: Well, what is the explanation, then, that you want to accept or admit?

Mr. Dougherty: Well, I want the explanation which was on the instrument itself, that this is the part over deductions, plus cash at various times.

Mr. Bollenback: All right, explain that, Mr. Heider.

A. (Reading): "Part over deductions plus cash, various."

Mr. Bollenback: Explain that.

A. Explain it?

Mr. Bollenback: Yes.

A. Well, it says here, "Part over deductions." I just told you it was probably for services.

(Testimony of Otto W. Heider.)

Mr. Bollenback: All right. What deductions?

A. For services rendered.

Mr. Bollenback: How much?

A. Well, probably \$30 or \$40.

Mr. Bollenback: For what?

A. Oh, for various and sundry matters.

Mr. Bollenback: For instance?

A. Oh, in regard to routes and one thing and another.

Mr. Bollenback: What did that involve?

A. What route did this involve? [111]

Mr. Bollenback: Yes.

A. I can't tell you now.

Mr. Bollenback: Yes, that \$35 item.

A. I can't tell you what route the matter involved—just things that might come up from time to time that they might ask about.

Mr. Bollenback: Did you ever bill them for it?

A. They paid it right there.

Mr. Bollenback: Did you ever send them a bill for services rendered?

A. No, they were in my office every week or two.

Mr. Bollenback: They were in there on your business, weren't they, Mr. Heider?

A. They were there on their business, too.

Mr. Bollenback: Did you ever appear before the Public Utilities Commission on behalf of the Rand Truck Line?

A. I had some correspondence with them.

Mr. Bollenback: Did you ever appear before the

(Testimony of Otto W. Heider.)

Public Utilities Commission in behalf of the Rand Truck Line?

A. I don't think I ever appeared before them.

Mr. Bollenback: Are you licensed to practice before the Public Utilities Commission?

A. I think I don't have to be admitted to write them letters.

Mr. Bollenback: Answer the question, please.

A. I have no special admission certificate that I know of. [112]

Mr. Bollenback: And you have never, as I take it, appeared before the P.U.C.?

A. Oh, yes, I have.

Mr. Bollenback: All right, when and where did you appear before them in relation to the Rand Truck Line?

A. No, I never attended a hearing for the Rand Truck Line, but I have on other matters.

Mr. Bollenback: Is it still your position that some of your checks are missing involving these Rand Truck Line matters?

A. I didn't claim that there were any missing, did I?

Mr. Bollenback: It is my understanding that you are claiming that the——

Mr. Dougherty: If the Court please, counsel has consistently misstated the record. I consider it a most unprofessional thing to do. What Mr. Heider has said——

(Mr. Bollenback laughed.)

(Testimony of Otto W. Heider.)

Mr. Dougherty: ———and if counsel approves of his unprofessional conduct that is his choice—what Mr. Heider has said is that he cannot now produce as much evidence as he could have, had not Mr. Bollenback been guilty of laches in this matter.

Mr. Bollenback: All right, Mr. Heider, what evidence can't you produce now that you could have before?

Mr. Dougherty: How can he know? He knows that his files are missing.

The Referee: I think I have heard enough on this matter [113] of laches.

Mr. Heider: If the Court will give me an opportunity on what the Court asked about this mortgage on this loan, if they will consent to it, I think I can go through old files at Sheridan and send it to the Court.

The Referee: I think when we have finished this we will ask for briefs on certain matters of law and probably oral argument. At that time if you have some additional evidence you want to produce you may do so.

Mr. Dougherty: Should we withdraw that at this time, your Honor?

The Referee: Yes.

Mr. Bollenback: Withdraw what?

The Referee: That note.

Mr. Bollenback: Well, you haven't got it. It isn't in—the Long note.

Mr. Dougherty: It is in that group of papers, Mr. Bollenback.

(Testimony of Otto W. Heider.)

Mr. Bollenback: All right, you find it.

Mr. Dougherty: Why all these petty objections? That is what I was prepared to do.

Mr. Heider: I can either find the mortgage or get a certified copy of it, the mortgage that goes with that transaction.

Mr. Dougherty: I suggest counsel withdraw his notes from the exhibits. [114]

Mr. Bollenback: All right.

The Referee: Does anyone have anything further?

Mr. Heider: Here it is (producing the note).

Mr. Bollenback: Seriously, I have some more questions to ask this witness. Do you have anything you want to take up, Mr. Dougherty?

Mr. Dougherty: No.

### Recross-Examination

By Mr. Bollenback:

Q. Now, Mr. Heider, you have now made a statement that this original mortgage included some obligations of the Rand Truck Line in addition to the money that you advanced to the Rands or paid to the Rands. A. That is my understanding.

Q. Then when this mortgage was drawn, or before it was drawn, you knew you were going to take it over, didn't you?

A. I had no sure proof of it. I do buy mortgages; I don't any more, but I did then.

Q. Well, if you didn't know it was going to be



(Testimony of Otto W. Heider.)

taken over by you why did you include in it some other obligation that the Rand Truck Line owed you? A. You say why did I include it?

Q. Yes.

A. Because they were consolidating their debts as far as they could at that time. [115]

Q. Well, then you knew that you were going to take it?

A. Oh, I very likely understood I would buy it. I didn't buy it at the time it was drawn, but it was very likely understood because it was drawn in my office, so that is very likely proof I would take it.

Q. And included in there is an obligation you say the Rands owed at another time?

A. On some equipment.

Q. And as a part of this whole transaction there was an endorsement by Mrs. Rand without recourse, is that right? A. Yes.

Q. You never intended to look to the Rands?

A. I never intended to look to the Rands personally, let's say; no, I didn't.

Q. Now, Mr. Heider, what are the allegations that are contained in that first complaint filed over in the courthouse?

A. Well, I have been looking for it, Mr. Bollenback.

Q. Well, you testified that there isn't anything in there that was of any consequence. Just tell us what was in there.

Mr. Dougherty: If the Court please, to shorten this we will get photostats of the pleadings.

(Testimony of Otto W. Heider.)

The Referee: Yes, we will have those introduced.

Mr. Miller: Counsel was able to state as an expert a conclusion as to what was in there. We would like to have him.

The Referee: I would rather have them made a part and I [116] can tell.

Mr. Bollenback: I would like to ask this witness another question as an expert, your Honor.

Q. Isn't it a fact, Mr. Heider, that usury is not an affirmative matter but is a defense?

A. There is no usury involved in this case.

Mr. Dougherty: As a conclusion of law Mr. Bollenback's statement is false and has been ruled to be inaccurate by the Circuit Court of the State of Oregon.

Mr. Miller: We asked for the expert opinion of the witness, not his counsel.

Mr. Dougherty: I cannot stand back and allow Mr. Bollenback to try to confuse Mr. Heider on a matter of law which Mr. Bollenback has already lost in the Circuit Court.

Mr. Bollenback: I am glad there is a higher court.

Q. Mr. Heider, do you have a copy of your claim there?      A. The first complaint?

Q. Do you have a copy of your claim there?

A. It is right here.

Q. A copy of your claim?      A. That I filed?

Q. Yes, do you have that there?

The Referee: The original claim is there. I handed it to Mr. Dougherty awhile ago.

(Testimony of Otto W. Heider.)

A. I will identify the claim if you think it isn't properly [117] identified.

Q. (By Mr. Bollenback: Here it is, Mr. Heider. Why did you insert in this claim the statement, "Affiant further states said debt herein proven and this claim are free from usury, as defined in the laws of the State of Oregon wherein the debt was contracted"? A. Free from usury?

Q. Yes, because it is a fact you knew at the time the claim was filed, at that time in June, 1949, that usury was being claimed in this, didn't you?

A. In the first complaint? I was just looking for a copy of the first complaint and I don't recall that you mentioned usury.

Q. In June, 1949, you filed a claim with the Bankruptcy Court in which you make the statement that the claim is free from usury.

A. I copied that out of a form book now, and that was part of the form.

The Referee: Let me have that claim.

A. I think that was copied out of a form book.

Q. (By Mr. Bollenback): You did say in your statement previously that you had computed interest at 10 per cent compounded semiannually, didn't you? A. Yes, I did.

Mr. Dougherty: Mr. Heider, you didn't say that that is the way the interest actually paid would work out. [118]

A. No.

Mr. Dougherty: Because in fact, some of the interest that was computed wasn't, in fact, paid.

(Testimony of Otto W. Heider.)

Mr. Miller: Your Honor, he is his client and he is an attorney and he is leading him right down the way.

The Referee: Well, most of this seems to be argument between counsel instead of testimony. You can make your arguments later. Is there anything else?

Mr. Bollenback: I hope to submit a memorandum of authority, your Honor, not with the idea that it is exclusive. I might want to put in some more, but fundamentally and basically it sets out the Trustee's position. I don't think that there is any need or reason to go into a long extended argument at this time. I do feel that a summary of the facts in this case is going to be quite important and I would ask the Court to give me permission to take the deposition of Mr. Heider out of the office here and prepare a summary of fact from that and the exhibits—I can get the exhibits here—with transcript references, and I will serve a copy on counsel.

The Referee: Well, I suggest that you supplement your brief by a summary of the facts which you claim are now in evidence and then that will give counsel for Mr. Heider an opportunity to summarize the facts as he sees them or to object to any facts that you state are a part of the record, and also answer your memorandum. Is that satisfactory, Mr. Dougherty? [119]

Mr. Dougherty: Thank you, your Honor.

The Referee: Now, there are one or two things left open. The question of the admission of the testi-

(Testimony of Otto W. Heider.)

mony of Vern Markee, which is a part of the transcript of the previous hearing. Objection has been made to it. Mr. Dougherty, do you still object to it?

Mr. Dougherty: If the Court please, I have confidence that the Court can extract the relevant parts of it. There are parts that are not particularly relevant to this particular controversy, but we withdraw our objection.

The Referee: All right, then, that will be so understood. Mr. Heider is going to send in a certified photostatic copy of the first mortgage, which will be given an exhibit number. What will the next exhibit number be?

The Reporter: 32, your Honor.

The Referee: And do you desire to introduce copies of any of the complaints—of the first complaint over there?

Mr. Bollenback: We might reserve the right to, your Honor. I don't know if, after further consideration, we will or not, but I think we ought to reserve the right.

The Referee: Well, I think that you have had so much argument about it, I think that it might clear up the record a little if you would submit it.

Mr. Bollenback: Very well, we will put them in.

The Referee: That will be the next exhibit. 32 will be [120] the number of the photostatic copy furnished by Mr. Heider, and 33 will be the complaints in the Circuit Court.

Mr. Bollenback: We can put in all five of them if you want.



(Testimony of Otto W. Heider.)

The Referee: Do you have any objection?

Mr. Dougherty: No, your Honor.

The Referee: All right, you may combine them all.

Then we will adjourn this hearing with the agreement with counsel that later on we desire oral argument, or if Mr. Heider desires to introduce further testimony he may do so, only on that point on that note.

Mr. Heider: Yes, that Long note.

(Witness excused.)

(Hearing adjourned at 4:25 o'clock p.m.,  
March 14, 1956.) [121]

### Reporter's Certificate

I, Lunetta Bussey, hereby certify that on Wednesday, March 14, 1956, I reported in shorthand certain testimony and proceedings had in the above-entitled cause; that I subsequently caused my said shorthand notes to be reduced to typewriting, and that the foregoing transcript, consisting of 121 pages, numbered 1 to 121, both inclusive, constitutes a full, true, and accurate transcript of said testimony and proceedings, so taken by me in shorthand on said date as aforesaid, and of the whole thereof.

Dated this 26th day of April, 1956.

/s/ LUNETTA BUSSEY,  
Court Reporter.

## CERTIFICATE OF CLERK

United States of America,  
District of Oregon—ss.

I, R. DeMott, Clerk of the District Court of the United States for the District of Oregon, do hereby certify that the foregoing documents consisting of Order of General Reference in Judge's Absence; Order of Adjudication; Order Approving Trustee's Bond; Proof of Secured Debt of Otto W. Heider; Trustee's Objections to Proof of Debt of Otto W. Heider; Supplemental Objections to Claim of Otto W. Heider; Motion of Otto W. Heider to Dismiss Objections to Claim; Findings of Fact and Conclusions of Law; Order Denying Claim of Otto W. Heider; Petition for Review; Trustee's Summary of Evidence; Trustee's Memorandum of Authorities; Certificate of Referee on Petition for Review; Order Dated March 28, 1957, Affirming Referee; Notice of Appeal; Bond for Costs on Appeal; Order Extending Time for Filing Record on Appeal; Stipulation; Order Extending Time for Filing Record on Appeal; Designation of Contents of Record on Appeal; and Order to Transmit Exhibits, constitute the record on appeal from an order of said court in a certain bankruptcy cause therein numbered B-29990, In the Matter of Rand Truck Line, Inc., an Oregon corporation, bankrupt, in which Otto W. Heider, a creditor, is the appellant, and Samuel A. McAllister, Trustee in Bankruptcy, is the appellee; that said record has been prepared by me in accordance with

the designation of record on appeal filed by the appellant, and in accordance with the rules of this court.

I further certify that I am sending in addition to the said transcript of record, and under separate cover, two copies of reporters transcript of testimony dated July 6, 1949, and March 14, 1956, together with Trustee's Exhibits No. 1 to No. 19, inclusive, No. 21 to No. 29, inclusive, and No. 33; and Claimants Exhibits No. 20 and No. 30.

I further certify that the cost of filing the notice of appeal is \$5.00 and that the same has been paid by the appellant.

In Testimony Whereof I have hereunto set my hand and affixed the seal of said court in Portland, in said District, this 22nd day of July, 1957.

[Seal]

R. DEMOTT,

Clerk.

By /s/ E. W. DAVIS,

Deputy.

[Endorsed]: No. 15646. United States Court of Appeals for the Ninth Circuit. Otto W. Heider, Appellant, vs. Samuel A. McAllister, Trustee in Bankruptcy of the Estate of Rand Truck Line, Inc., Appellee. Transcript of Record. Appeal from the United States District Court for the District of Oregon.

Filed July 23, 1957.

Docketed July 27, 1957.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for the  
Ninth Circuit.

In the United States Court of Appeals  
for the Ninth Circuit

No. 15,646

In the Matter of:

RAND TRUCK LINE, INC.,

Bankrupt,

OTTO W. HEIDER, a Creditor,

Appellant,

vs.

S. A. McALLISTER, Trustee in Bankruptcy,

Appellee.

STATEMENT OF POINTS ON  
WHICH APPELLANT RELIES

The points on which appellant intends to rely in this appeal are as follows:

(1) The Bankruptcy Court was without jurisdiction to consider the objections of appellee to the claim of appellant.

(2) Even if the Bankruptcy Court had such jurisdiction, such objections should not have been considered because of undue laches on the part of appellee.

(3) That the order attacked is not, in fact or in law, supported by the findings.



(4) That the findings, material to the claim of appellant, are erroneous and without any support in the record.

/s/ WILLIAM E. DOUGHERTY,  
Of Attorneys for Appellant.

Affidavit of service by mail attached.

[Endorsed]: Filed September 25, 1957.

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[Title of Court of Appeals and Cause.]

MOTION WITH RESPECT TO PRINTING  
OF EXHIBITS AND ORDER

Now comes appellant and respectfully shows the Court that there are in this cause a substantial number of documentary exhibits (including accounting records) which would be very expensive to print or otherwise reproduce, and which may easily be considered in their original form; and

Moves the Court for an order permitting all of said documentary exhibits to be considered by the Court in their original form without the necessity of printing or otherwise reproducing the same.

/s/ WILLIAM E. DOUGHERTY,  
Of Attorneys for Appellant.

So Ordered:

/s/ ALBERT L. STEPHENS,  
Chief Judge, U.S. Court of Appeals for the Ninth  
Circuit.

[Endorsed]: Filed September 25, 1957.